Since independence, it was expected that the new and free Indian government would recognise the demands of tribal focusing more on land and forests rights and protect them from discrimination and exploitation. But the post-independence, Government of India disappointed the tribal population by continuing the same old basic laws and principles laid down by the British administration, exploiting their *Jal, Jungle* and *Jameen*. All development programmes after independence such as, establishment of industries, power and steel plant, roads, National Parks, construction of dam etc. have resulted huge displacement among the tribal population from their main habitat. Thus, not only they deprived from education, health, forest rights, employment, water, etc. but also it became very tough for them to sustain for live hood and to protect their culture, tradition, language, and identity. This book discusses socio-political and economic issues faced by the tribal population in India such as trafficking, displacement, poverty, illiteracy, unemployment, health, witchcraft, naxal problems etc. Similarly, it will also highlight all major programme and policies implemented by the Government of India to uplift tribal people in social, economic and political area.

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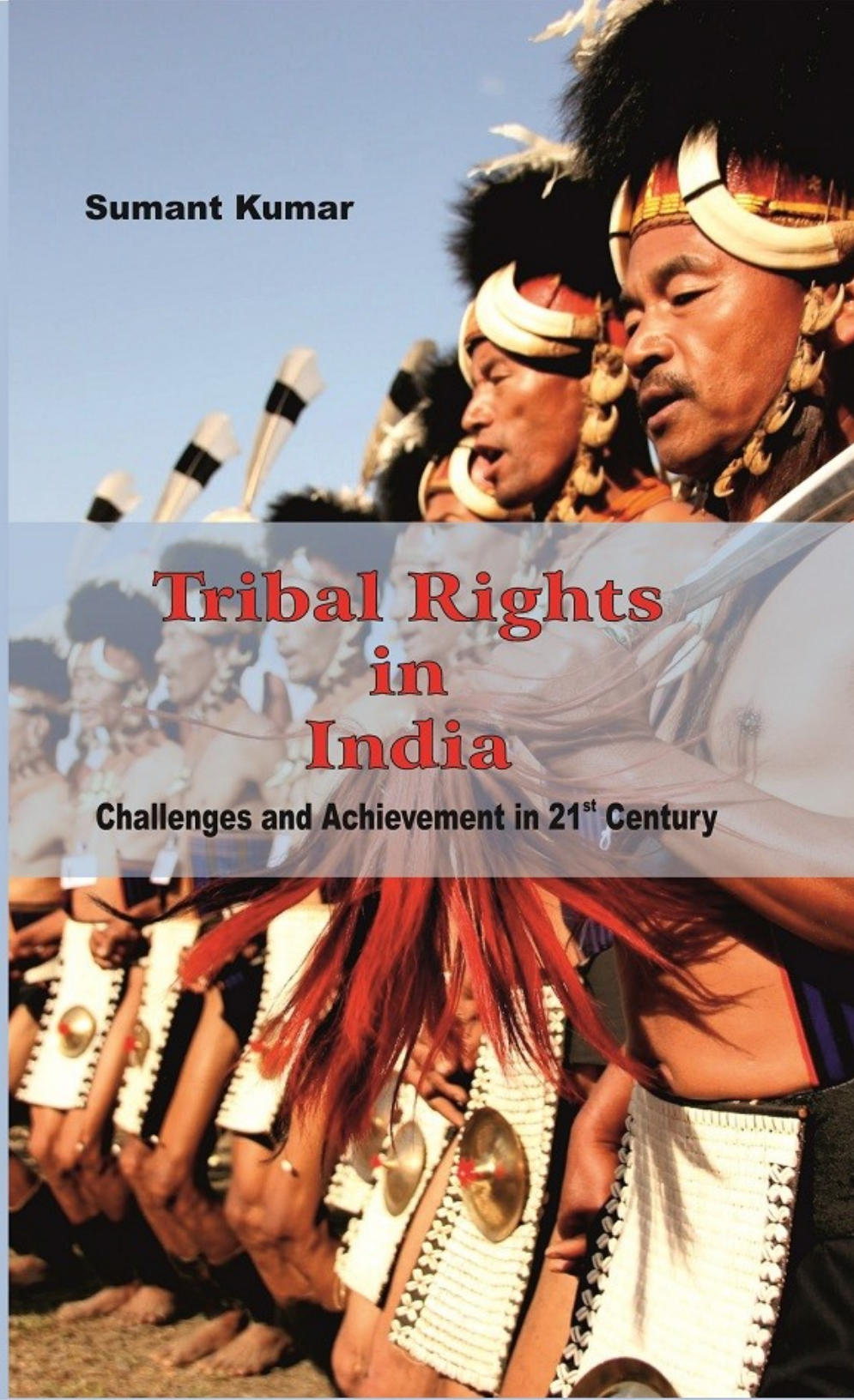
Challenges and Achievement in 21st Century
Sumant Kumar



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Tribal Rights in India:* *Challenges and Achievement in 21st Century

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Since Independence Tribal issues is naturally discussed at various level, in most of the tribal issues is related to illiteracy, health, displacement, unemployment, discrimination, poor economic status, cultural, identity etc. This book has covered almost all the aspect under various themes. This book has also tried to create a complete understanding about the tribal human rights issues in contemporary era, including, all programme, policy which were implement on the paper only. This work also tried to find what the main reason behind this widening development gap is and why government is unable to achieve the goals. Why tribal development issues in India is lagging behind other countries. To know all such issues this book has compiled several topics under the one theme in which first chapter discussed on "Development *At The Cost Of Humanity: Tribes, Their Problems and the Efficacy of Safeguards*" which is well written by Anshi Joshi and Ananya Vatsato provide a understanding about Tribes with their culture and traditional knowledge they have included various parts of society, and how tribes have gained a special place which, unfortunately, is not recognized by the masses. Under this paper they have discussed what reasons they are still stereotyped are and why people in general are unaware of their real status. Including, how they have maintained their economic, social, culture, customs and practices against globalisation. A brief discussion is made under this paper to highlight the displacement movements since independence.

Second chapter is covered by Puranjoy Ghosh on "*Changing Concept of Tribal Justice: A Brief Conspectus*" he has nicely presented discourse and analyse legislative and strategic planning related to institutional designing of synergic approach through the judicial agencies and also to appreciate the space between the structures, and how legal traditions and practices between '*Indigenous*' and '*Non-Indigenous*' justice systems in India. He has well defined how the social organizations closely associated in exploratory op-

erations and have set new institutional social orders and governance patterns to clarify the understanding about social hierarchy and administrative systems avail in modernized society for the dispensation of justice. Similarly in the third chapter Arya Chandran on *"Mainstreaming tribal children through Ashram schools-A qualitative study"* explored how literacy and educational importance are playing powerful role for social and economic development for tribes groups in India. He made a clear statement that currently, the tribes lag behind not only the general population but also the Scheduled Caste population in literacy and educational attainment. Later, he has concentrated more to find why the tribal dropout rate is extremely high relative to the mainstream population, which resulted poor rate of tribal in the job market.

In the fourth chapter Afkar Ahmad on "*Tribal Trafficking in India: A Case Study of the State of Jharkhand*" firstly defined the concept of trafficking in people, why it consider as one of the worst form of criminal practice all over the world. He has briefly highlighted the historical background of human trafficking and later it relates to India and under the Indian perspective he specially focused on Jharkhand State. He makes a clear approach in his paper to find why major causes leading to trafficking in India, especially in Jharkhand. While focusing trafficking issues he made a Legal Framework to address trafficking in India**.** In his work he has briefly discussed the Immoral Traffic (Prevention) Act, 1986, Indian Penal Code, 1860including several case study is highlighted.

Geeta Sahu in the fifth chapter "*Maternal and Child Healthcare Services Utilization: Right for Equal Health among Tribal in India*" stated that health is major key component for any nation to develop itself. So they can participate actively in day-to-day life and so towards the development of nation and contribute for economic growth of the country. Later, she also mentioned that health services is also fundamental human right especially maternal health. She has identified major challenges to achieve this goals and described that many programmes and schemes have been launched by the government at over the period to improve the same but huge diversity in terms of caste and ethnicity including others. This study throws light on the actual scenario of availability of health services in the tribal regions of India. In sixth chapter, Koushik Bagchi in his paper "*Witch craft, a correlation between Tribal Society and Mental Health: A Critical Socio-legalStudy"* briefly discussed historical background on Witch-hunting and he has relate it with religion and Witchcraft. He also has identified the factors which lead to Witch-hunting and few of major themes under the witchcraft discussed such as mental illness and witchcraft, international law and witch hunting, laws in India and witch hunting, law relating to witch-hunting in the state of Jharkhand

"Injustice to Tribals of Ladakh" is well written by Pradeep Kumar Sharma in seventh chapter, as we can know that only few work focused on tribals of ladakh. This paper is written with first hand report by his field study in Ladakh in which he has stated that Ladakh has demanded Tribal Status ever since the late 1970s. But only a few Ladakhi ethnic groups have been accorded the said status, whereas more than 98% of Ladakh carries forward the rich tradition of ancient customs and practices, qualifying them as scheduled tribes, thereby guaranteeing them added constitutional privileges. The grave injustice suffered by Ladakhis ever since the Independence of India, due to apathy of the State Government has led to chronic lack of development and immense suffering of the people. Some of the issues and concerns of the tribals of Ladakh are summarised under the paper.

Shweta Mohan eight chapter is on *"Forest rights of Tribal's in Jharkhand"* in which she stated that forest is essential for basic life support system. As the green giants not only support rich biodiversity with variety of products and services but are also considered as the major source of revenue for food and shelter. The entire life of indigenous people revolves around the forests and therefore their right to forest is always juxtaposed to the Forest and Environmental Laws. The aim and objective of this paper is to throw light on the rights of the tribal's with special reference to the forests act right from pre independence to till date. Forests management and conservation program cannot succeed without the support of indigenous people therefore a holistic approach is required which focuses on the paradigm shift on FRA and JFM. Under the ninth chapter, research scholar Shreya Jain focused on "*Tribals, Sanitation and Their Rights"* as she explained that Sanitation is one of the major issues in India and still open defecation practices is quite common in India especially in tribals areas. Under the paper, she has discussed various themes such as household with Toilet Facility, health and open defecation, clean India movement also known as *'Swachh Bharat Abhiyan'* including she has mentioned several programmes and policy. To support her view she explained that empowerment of tribal women does not mean only economic liberty but also access to other aspect such as dignified life, good health, education, active participation in decision making etc. Women feel constrained to relieve themselves during daytime with the fear of losing their privacy & dignity. Open defecation is one of the major reasons behind the increase in crime rate among women in India.

Last chapter is written by Sumant Kumar and Lovely Kumari on "*Inequalities in the name of Development*" under the paper they have mentioned that, since independence Tribal people always bear the cost of the development as most of the development project initiated on the land of tribal people. In this paper they has mentioned several programmes and policy, including

five year plan, Act which were implement for the development of tribal people and also to improve the economic statues however it never achieved in such manner. Simultaneously, under the construction of Dam, mining, national road, wild life sanctuary projects resulted huge displacement, due to that a huge economic gap is created among tribal's. All these programmes displaced tribal people from their ancestral land. In few cases government allocated resettlement process but either they allocated isolated area or barren land where they face lack of water, health, education and other basic necessities. Under this paper both the authors to support their argument several statistics and reports presented to show the tribal situation in contemporary.

Dr. Sumant Kumar

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CHAPTER 1

Development at the Cost of Humanity: Tribes, Their Problems and the Efficacy of Safeguards

ABSTRACT

Tribes with their culture and traditional knowledge form a significant aspect of Indian societal tradition. Among the various parts of society, tribes have gained a special place which, unfortunately, is not recognized by the masses. They are still stereotyped and people in general are unaware of their real status. They have their own social, economic, religious and political customs, which govern their lifestyle in every manner. However, tribes in India are facing a number of problems. They are not having access to proper education, and the natural resources are being snatched away from their hands. With the clearing of forests and increasing industrialization, tribes are forced to migrate to cities, where they have become victims of expanding unemployment and identity crisis. However, all the problems that tribes are facing today are connected to the displacement movements that are in action since the time of independence. For construction of power plants, dams, industries, huge patches of land are cleared, and tribes are displaced. Tribes are dependent on three Js: *Jal, Jungle* and *Jameen*. This paper discusses the problems of the Tribes in India in the light of various displacement movements and their impact on the tribes so displaced. It also discusses the various Constitutional safeguards for tribes and tribal culture, and also analyses the "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006", and suggests the possible reliefs for the tribes.

Keywords: Tribes, Displacement movements, Safeguards, Cost of development, Greater common good.

INTRODUCTION

Tribes and tribal people have been an integral part of the Indian landmass since the very beginning. Tribes are one of the most organized yet ignored strata of the society, where their inclusion is itself a problem hovering before the authorities for a long time. The general perception of tribes or tribal people for an urban inhabitant is a wild or savage individual who wears leaves and animal skin and finds food through hunting and gathering. The true picture of tribes in India is entirely different from such description. The very definition of the Tribe lucidly provides for the difference in the reality and the ignorant perception of the Tribes. According to Oxford dictionary, a tribe is "*a social division in a traditional society consisting of families or communities linked by social, economic, religious, or blood ties, with a common culture and dialect, typically having a recognized leader*"[1]. Merriam Webster defines a tribe as a "*social group comprising numerous families, clans, or generation together with slaves, dependent, or adopted strangers*", which reflects the Roman origin of the concept[2]. Therefore, tribes are organized communities observing a particular set of culture and beliefs. Usually, the tribes in India are the forest dwellers and find themselves closely connected to nature. They are adapting to changes with time, and new explorations are coming before them, but at the same time, they keep their ties tight with nature. They perhaps believe that nature is the strongest force, and no amount of technology could substitute what nature offers, which is quite correct to some extent. However, due to a number of reasons, Tribes in India are facing problems not just related to their culture, but also about their existence as a Tribe. They are the victims of forced modernization, economic disparity, and modern, subjectively-developed but objectively applied parameters of development. In Indian legal system, the Tribes are rather referred as Scheduled Tribes. Scheduled Tribes are mostly those backward sections of the Indian population who still live by tribal ways, customs and cultural norms, preferably over the general laws. They are mostly cut off from the main currents of the nation.[3] They have been divided into four distinct zones— North, Eastern, Southern and Central. The basic and common identification marks for these people are:

(i) Comparatively primitive way of living;
(ii) Nomadic habits;
(iii) Love for nature, cultural links and dance, and habitation in remote areas.[4]

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[1]https:// en.oxforddictionaries.com/definition/tribe.
[2]https://www.merriam-webster.com/dictionary/tribe.
[3]M.P. Jain, Indian Constitutional Law, 1506-1507 (8th ed, LexisNexis 2018).
[4]*First Report of the Commissioner for Scheduled Casted and Tribes*, 3, 11 (1952).

Therefore, among a number of problems that Tribal communities in India face, the one, which affects not just individuals but generations, is the development at the cost of tribal displacement, against which a number of movements have been called and are on-going in India.

MAJOR PROBLEMS FACED BY TRIBES IN INDIA

So far, tribes in India have been treated as a separate group, who are different from other citizens, in lifestyle, trends and all the different aspects of life. Due to this, Tribal people have been facing aloofness and are cut off from the mainstream, even if attempts for blending the two are made. However, even after years, there are a number of problems that Tribes are facing. Such problems are the chief reason behind the under development of the tribes in India.

Losing control over natural resource: Every individual is a stakeholder of what nature gives, but tribes have not been just the stakeholders, but also the protectors of the nature. For them, nature is much more than a mere source of resources and livelihood. They find themselves connected to the nature through various cultural practices and traditions, which may involve nature worship as well. Before the advent of British in India, the tribals enjoyed their rights over nature unhindered and managed natural resources accordingly. Land, water, forests, soil, animals, fishes, all are the elements of the natural heritage that tribal culture protects and preserves. With the dawn of industrialization, darkness started to surround the freedom that tribals enjoyed and rights that they inherited from ages were taken to extract minerals and other resources from the interior areas of India, as urban areas usually lacked any of it. The areas which were the usually dug and disturbed for such tasks were tribal areas. Therefore, foe capital benefits, the tribals were deported out of those areas, where their roots remained, and the state authorities took over. With a completely changed lifestyle, the Tribes began to resettle themselves and after some time of such settlement, another task with another displacement arrived, which basically yielded a vicious cycle of displacements. Thus, one way or another, tribals have faced displacement for a long period. Such displacements would not only disturb the peaceful existence of the tribes, but also lead to loss of ownership rights of the lands that rightfully belonged to them. Such situation also brought financial drains, which led them to the doorstep of landlords, moneylenders, and officials, who are still living in the feudal mindset. Tribals, as settled nearby the forest area, utilizing the forest resource and protecting them at the same time, were balancing the urban rural disturbance. Therefore, with no secure means of livelihood, they lived off the forest resources, and various developmental acts led to taking away of the means of livelihood.

Lack of requisite education: Another major hindrance in the path of development and societal equitable status of tribal people is lack of mainstream, formalized, systematic education. Education is a primary determinant for the degree of development. With technological developments, the outreach to tribal areas surely has increased, but at the same time, the lack of proper utilization of such technological advancement for developmental purposes is the major obstacle between education and tribes. The education that is accessible to tribes is making them literate, not educated. The major difference between the education and literacy in the context of tribal development is that the literacy is merely enabling them to read, speak and write, but they still lie in darkness, unaware of their rights and entitlements, even after 70 years of independence. According to the census of 1991, nearly 70% of the tribes remained uneducated in India, which actually posed a serious problem. As per the census of 2001, the pan-India tribal literacy rate was 47.1%[5], which showed a certain progress from the 29.60%. Another transition of literacy rate's growth showed in the census of 2011, 58.96% of the scheduled tribes are educated, which is although a good figure, stands low when compared to that of the national literacy rate i.e. 72.99%.[6] On comparing the statistics that have been there for past three censuses, a gradual change can be observed, which rather indicates the upward development of the literacy rate. However, the growth indicated in such manner is superficial, because if we compare the tribal literacy rates with that of the nation, the disparity can be observed. In all the three statistics, the difference largely exceeds 10%. The same has been reflected in the table below:

Group/ Year	1991	2001	2011
Total Population	52.21%	64.84%	72.99%
Scheduled Tribes	29.60%	47.10%	58.96%
Difference	22.61%	18.26%	14.03%

Literacy, which once, was considered as a position where a person was able to read, write and make signature, is no more the same. The requirement of the contemporary society is not limited to literacy; education, that too skill and knowledge specifically which enables a person not just to live with respect and dignity, but also provides the basic knowledge of one's rights and liabilities. Literacy facilitates the mind, education facilitates the conscience. Therefore, in cases of displacement and encroachment over the native lands by the huge MNCs or even the government, the tribals remain with no option but to comply

[5]Official Press Release, Ministry of Tribal Affairs, Government of India, Aug. 9, 2012, http://pib.nic.in/newsite/PrintRelease.aspx?relid=85918, (Last retrieved on April 17, 2018).

[6]Statistical Profile of Scheduled Tribes in India, 2013, Ministry of Tribal Affairs, Government of India, https://tribal.nic.in/ST/StatisticalProfileofSTs2013.pdf, (Last retrieved on April 17, 2018).

to their orders. For such displacements, there has to be a compensation package for the people displaced, and due to ignorance and lack of knowledge of what they deserve, they settle for nominal relief, accepting it as the ruling of nature; as a matter of their fate.

Crisis of identity, health and adaptability: Tribes were treated differently not just after independence but much before it. There were exploitations which could never come into light, because identity of the tribes was an uncertain phenomenon during that period, which to some extent, continues till date. There were tribal uprisings and revolts, which resulted in conflicts between the officials and tribals, and resultantly, reflected tribes in a bad light.

Colonial rule in India brought a number of policies that had fatal consequences for the indigenous people of the country. The British approached the jungles with an aim to turn primitive people into civilized, social ones, who could be a part of an organized and centralized democracy. An example of one such act was "Criminal Tribes Act of 1871", which sought to control the movement of certain tribes whom the British identified as criminals. Under this act, not individuals, but all the members of a particular tribe were considered criminals, even if they were far away from crimes. Such acts sowed the seeds of extensive social stigmatization.[7]

Another major change was the approach towards forest policies and tribal land displacements. Unlike its predecessors, British government claimed a direct proprietary right over forests. They wanted to preserve and use forests for their own purposes and did not want the natives to have access to them and thus, they passed the Indian Forest Act, 1878. By this act, huge patches of forests lands that adivasi or the tribes had used for their survival for years and beyond the count of generations were now British property; reserved by the British government for economic and administrative benefits. This practice continued for whole of the colonial period. Due to such control by the government, new moneylenders and traders rose and due to this, widespread adivasi land displacements begun.[8]

In the initial years post-independence, the focus of the development process started by the government was on heavy industries and the core sector. As a result, giant steel plants, power projects and dams came up. These projects required bulk of natural resources as their fuel, and the resources were present in the forests or the less accessible areas; the homes of the tribes. Along with

[7]Verghese Ajay, British Rule and Tribal Revolts in India: The curious case of Bastar, Cambridge Journal for Modern Asian Studies,Volume 50, Issue 5, 1619-1644. Available at: https://www.cambridge.org/core/journals/modern-asian-studies/article/british-rule-and-tribal-revolts-in-india-the-curious-case-of-bastar/D1F52864F0CBD6D37FFC2B7DE9CBA5A4, (Aug. 19, 2015). (Last retrieved on May 28, 2018).

[8]See Supra note 7.

such projects, mining activities also gathered speed in these areas. Government was focused upon industrialization and urban growth in that period, therefore, it also supported such projects by acquisition of tribal lands, indiscriminative use of resources and facilitating the companies in continuing such programmes. Such support offered by the government put tribes in a disability and led to large scale displacement of tribal population, which is a matter of great concern till date. The regions primarily affected by such phenomenon were parts of Jharkhand, Orissa, Chhattisgarh, West Bengal Madhya Pradesh etc. Government provided for cash compensation against such displacements, but;

(i) Such compensation could not compensate for complete overturning of life, and

(ii) Such compensation could not be utilized as a result of multiple factors such as lack of planning and support and knowledge.

There were multiple problems such as search for employment and food. No settlements were there to facilitate the employment process of the poor tribes, who were forced to live in slums or form ghettos outside the towns, and find daily work as unskilled and unorganized sector labourers. This led to the identity crisis for the tribes, as such migration was associated with psychological effects on the minds of the tribals. It also put the tribals into conflict with their culture and customs and the urban lifestyle and somehow, this resulted in making the tribals outcast.[9]

Tribal population suffers from pangs of chronic diseases which are majorly air and water borne, malnutrition, deficiency of essential nutrients such Iodine and Calcium. Even diseases like tuberculosis, leprosy, skin infection and liver dysfunction due to excessive alcohol consumption are common among the tribals.[10] The tribals who have migrated are the ones who suffer more than the ones who are situated at their native lands. Lack of medical facilities and awareness for good physical, mental and social health even after 70 years of independence are one of the contributing factors towards the setbacks that are hindering the tribal people's growth and development. In today's era, equality is much more than just the verbatim equal treatment. Life includes not just human existence, but also ensures liberty and dignity to individual, be it urban or rural,

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[9]Vol. 2, George Pfeffer & Deepak Kumar Behera, Contemporary Society: Development Issues, Transition and Change 345 (1997), available at: https://books.google.co.in/books?hl=en&lr=&id=TZOvYPBrxl0C&oi=fnd&pg=PA78&dq=displacemen t+and+tribals&ots=utnbOl1QAO&sig=8w6MOHhwabzTnX0BV-jp2zEzm-Y#v=onepage&q=displacement%20and%20tribals&f=false (Last Retrieved on May 18, 2018).

[10]Girase, Swati, The Problems of Indian Tribal Community in Current Scenario, International Journal of Developme nt Research Vol. 06, Issue, 05, pp. 7924-7927, May, 2016, available at: http://www.journalijdr.com/problems-indian-tribal-communities-current-scinario, (Last retrieved on May 20, 2018).

city dwellers or tribal. The migration and the impact of globalization on the cities have also brought tribes a new dilemma: whether to live by their roots, customs, and tradition, or adapt to the new, modernized culture of cities where they are either displaced or migrated, as they have to ensure their survival in new atmosphere.

The Policies of development brought after 1991, known as Liberalization, Privatization and Globalization (LPG) along with the ties with WTO were premised at the development of urban areas. For such development, the resources were to be extracted from the remote areas where natives were situated. These agreements were aimed at gaining access to the natural resources in different corners of the world. Through such agreements, big companies with huge capital could easily acquire whatsoever raw materials they need to feed the lifestyle of the urban, westernized people. The worst part about such policies is that nobody could really be in a position to complain against them once a government signs the agreement — the backing lies right there with the companies and adjustments are made. Indigenous people across the globe are being alienated from their lands, traditions and resources, knowledge and lifestyle. Depletion of tribal culture and ethnicity is one of the biggest ill effects that capitalism and industrialization brought with them and severe threats to the existing tribal population.[11]

Naxalism and its impact on Tribes

The Naxalite movement began in Naxalbari, West Bengal in 1970s. It was principally founded as an 'agrarian struggle' as collected from the events that were observed in Naxalbari, West Bengal. With the passage of time, the leaders and meaning of the ideology both changed and thus, there were numerous conflicts and upheavals, both internal and external. From the agrarian revolution, slowly, Naxalite movement also adopted the identity of a fight for nationality.[12]

Naxalites have found their support in tribes, as they use the Tribes as their workforce, by making attempts to change their minds and make them work for aiding the Naxalite movement. Movements like *Salwa Judam* and others are prominent examples of such involvements. "The Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act, 2006" was enacted to compensate the effect of widespread unrest among the tribes on the account of their eviction from the forests. This served as a major cause for growth and

[11]Tribal Displacement in Name of Development, available at: http://ww w.journalijdr.com/. https://socialissuesindia.wordpress.com/2012/09/07/tribal-displacement-in-the-name-of-development/,(last retrieved on May 17, 2018).

[12]Saharia, R.P., Naxalism and Its Impact in India, Research Journal of Humanities and Social Sciences, Vol. 5, Issue. 2 (2014),http://rjhssonline.com/HTMLPaper.aspx?Journal=Research+Journal+of+Humanities+and+Social+Sciences%3bPI D%3d2014-5-2-8 (Last retrieved on May 14, 2018).

development of Naxalite movement. After enactment of this act, the government had announced that the forest land title deeds will be distributed among the tribes who were the real, ethical and moral owners of such lands, nothing could be materialized effectively as this Act has been trapped in the vicious cycle of bureaucracy. The eviction of tribals from their lands is not just for building dams or power projects, but also for marking areas as wildlife sanctuaries and national parks without consulting or taking their consent.[13]

Not just the eviction, the ignorance of tribals and their rights as a community has also contributed towards the association of tribals with Naxalite groups.[14] The actions of Naxalite groups involve not just such inclusion, either voluntary or forced, but are also criminal in nature. Murders, Loots, Rapes form a general form of atrocity, rather revenge for the Naxalites in tribal areas if they receive non-compliance. Therefore, the Naxalite movement is a major problem that is faced by the tribals and the government for the protection of tribals.

Therefore, tribes in India face a number of problems on individual, social, political, and economic levels, which results as impediments in the path of tribal development, Not just these problems, but lack of awareness and lesser outreach towards the authorities are one of the prominent reasons for problems that tribes in India have been facing. However, all these problems have a common link to one humungous problem: Displacement of the Tribes.

DISPLACEMENT MOVEMENTS AND PLIGHT OF THE TRIBES

After India gained Independence, its leaders chose the path of a planned economy, starting with the First Five Year Plan in 1951. Since India had been drained of all its wealth during the British reign, these plans were mostly focused on economic development and its most prominent symbols were mega projects like dams. Late Prime Minister Jawaharlal Nehru termed them as "temples of modern India". However, just like every coin has two sides, these steps taken by the government towards nation-building had both positive and negative effects too. There is no doubt that these dams brought about not only economic prosperity but also provided energy to the growing industries and irrigated farmlands. On the other hand, they also led to the forced displacement of thousands of people from their ancestral lands, most of them being tribals. The "temples of modem India" have become "temples of doom" for the uprooted people.[15] It is interesting to note that the tribal community which forms 8% of the country's total population

[13]Ibid.

[14]Ibid.

[15]Biswaranjan Mohanty, Displacement and Rehabilitation of Tribals, EPW, 1318, 1318 (2005), https://www.jstor.org/stable/4416394?newaccount=true&read-now=1&seq=1#page_scan_tab_contents (Last retrieved on May 17, 2018).

forms 47% of the population displaced due to large projects undertaken by the government. [16]

I. Sardar Sarovar Project

Of all the ambitious mega projects taken up by the Indian Government, the Sardar Sarovar Project became the most controversial one which later turned into a legal debate and ultimately became the landmark case of *Narmada Bachao Andolan v. Union of India.*[17] The Sardar Sarovar Project (SSP) is an interstate, multipurpose joint venture of four states, viz., Gujarat, Madhya Pradesh, Maharashtra and Rajasthan, with a terminal dam on river Narmada in the state of Gujarat. "*The controversy over large dams on the River Narmada has come to symbolise the struggle for a just and equitable society in India"*[18]. In brief, the Government's plan is to build 30 large, 135 medium and 3000 small dams to harness the waters of the Narmada and its tributaries which the proponents of the project claim are *'desperately required'* for the purpose of development.[19] It is the largest water resources development project in India and possibly in the world. The Narmada Water Dispute Resolution Tribunal has fixed the design parameters of Sardar Sarovar Dam with a view to derive optimum irrigation and power benefits.[20] The consruction of the dam began in June 1987 with a loan of $ 450 million from the World Bank, a credit of 27 billion Yen for supply of Turbine Generator sets of riverbed powerhouse from Overseas Economic Co-operation Fund (OECF) of Japan and clearance from the Ministry of Environment, Government of India.

The project faced controversial issues from its very inception. Contrary to the claims of the Government, the opponents of the Project questioned the basic assumptions for the Project claiming that it was dependent upon baseless assumptions of the hydrology and seismicity of the area.[21] The other claim that they made was that the construction of the dams would dispossess a large number of indigent and underprivileged communities (mostly tribals and dalits) of their livelihood. The interests of these communities were being overlooked for the 'greater common good'. No purported benefits can be argued for supporting the denial of fundamental rights of individuals in a democratic society.[22]

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[16] Dr. J. Uma Rao, Displacement and Protest Movements: The Indian Experience, Vol.3, IJMER 1554, 1558-1559 (2013), htt p://www.ijmer.com/papers/Vol3_Issue3/CC3315541560.pdf.

[17]*Narmada Bachao Andolan v. Union of India,* AIR 2000 SC 3751.

[18] A Brief Introduction to the Narmada Issue (Friends of River Narmada), http://www.narmada.org/introduction.html (Last retrieved on April 15, 2018).

[19]Ibid.

[20]*Is Sardar Sarovar Dam boon or a bane*?, Sept. 22, 2017 available at http://www.thehindu.com/opinion/op-ed/is-the-sardar-sarovar-dam-boon-or-bane/article19730554.ece (Last retrieved on May 2, 2018).

[21]Supra note 18.

[22]Supra note 17.

They believed that the ends of the Project could be met by alternative means that were socially just and economically viable.

There were other impediments in the continuation of the Project as the World Bank withdrew its loan in 1995 due to a report released by the Bradford-Morse Committee constituted by it. In the same year *Narmada Bachao Andolan* filed a writ petition in the Supreme Court to put an end to the construction of this dam on account of displacement. Narmada Bachao Andolan founded in 1986 originally oriented towards providing project-related information and legal representation to the residents of the Narmada Valley. However, the total annulment of the Sardar Sarovar Project became its sole objective later on. The founder of this movement, a social activist-Medha Patkar, visited villages in the Narmada valley that were to be submerged after the completion of the Sardar Sarovar Dam in southeastern Gujarat, one of the largest of the planned projects, due to which she became aware of the indifferent attitude of the officials of the local government towards the condition of the people who had been displaced. It was due this movement that the World Bank withdrew its aid for the mega project. The worst affected among those displaced were the indigenous tribes of the Narmada Valley (a civilization older than Hinduism) who not only had to relocate to another village but also get rid of their own customs and traditions and learn to live in the 'so-called' modern and sophisticated society. Also, the government is expected to consult those likely to be negatively affected by the projects undertaken by it through various stages of displacement and restatement so as to enable them to rebuild their lives. This, however, is very far from being the case.[23]

The trial in the Supreme Court was mostly focused on the issue of resettlement and rehabilitation and continues to be a burning issue even after its final judgment. The final judgment was given in favour of the Government permitting the continuation of the Project. The ratio decidendi behind the case as stated by the apex court was the 'doctrine of laches'.[24] The court stated that the "anti-dam" organization-Narmada Bachao Andolan-had been in existence since 1986 but it chose to challenge the clearance given for the construction in 1987 by filing a writ petition in 1994. The majority opined, "*the Court has entertained this petition with a view to satisfy itself that there is proper implementation of the relief and rehabilitation measures*".[25] Two

[23]http://www.ielrc.org/content/c0005.pdf (Last retrieved on May 16, 2018).

[24]According to Black's Law Dictionary, it is based on the maxim that "*equity aids the vigilant and not those who slumber on their rights*" i.e. a legal right will not be enforced if a long delay in asserting the right has prejudiced adverse party.

[25]Regina Menachery Paulose, Water Politics: Narmada Bachao Andolan v. U.O.I. and Ors., The Lex Warrier- Online Law Journal, (Jan. 5, 2013), http://www.lex-warrier.in/2013/01/water politics-narmada-bachao-andolan. (Last retrieved on May 19, 2018).

large international treaties, viz.-the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social, and Cultural Rights (ICESCR)- that embody the principles of Universal Declaration of Human Rights (used by Words Commission on Dams) were not taken into consideration. The pace of the process of rehabilitation has been very slow.

Impact on tribal communities

The tribal communities of Narmada Valley have suffered immensely due to this decision. Some of these impacts include[26]-

- Extinction of the tribes that lived along the Narmada
- Abolition of protective measures for the different tribal communities in the Narmada Valley.
- Destruction of tribal self-governance policies set up on a national level. The Tribal Self Rule Law (Article 342 of the Constitution of India) gives 532 scheduled tribes in India the right to self-governance as they have unique customs, traditions and lifestyles. The Tribal Self Rule Law calls for "consultation before land acquisition for development projects and resettlement of persons affected by such projects".

It is clear that the Government and the Supreme Court have failed to protect the interest of these communities in order to protect the 'national interest'

II. Koel Karo

Two dams were proposed to be built on the northern and southern banks of the Koel Karo river in a tribal dominant area of the state of Bihar in1973. The movement against the construction of the dam gained momentum in 1994 which led to organized protests by almost 70,000 tribals who gatherd in the area to be submerged. After this, an appeal was filed in the Supreme Court which stayed the land acquisition by the government for five years. However, after the expiry of the five years the government again decided to build and the fight against it is still going on. The protest was due to the reason that the dam if constructed would submerge the forest land on which the adivasis were dependent for their very existence. There was again a protest in February, 2001 at the police outpost in Tapkura, Jharkhand during which a large contingent of police opened fire from rifles and stun guns on about 5000 people gathered, resulting in 9 people being killed and 22 injured.[27]. In the three decades of protest against the proposed dam, this incident is considered as the first major incident involving violence.

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[26]Ibid.

[27]See Supra note 16.

III. Hirakud Dam

Built on the Mahanadi river in the year 1957, the Hirakud dam (the largest multi-purpose river valley project in Orissa) was primarily conceived to serve as a flood control measure. This 'so-called' development project pushed the underprivileged to the periphery of the society, most of them belonging to the tribal communities dependent on the forest resources for their subsistence. It has not only uprooted them from their ancestral land but also destroyed their indigenous culture.

According to a report by Scheduled Areas and Scheduled Tribe Commission. (VI, 1960-61), of the total population affected due to submergence of the land, 18.34% of the population belonged to the tribal community.[28] Although the government policy contained both methods of cash compensation and physical rehabilitation for the evacuees but this goal was far from achieved. The total number of households re-settled therein was about 11% of the total households displaced and the total land reclaimed for their rehabilitation was no more than 5% of the land acquired for project from them.[29] Despite of the availability of ample time and resources, the government of Orissa has not been able to implement its rehabilitation policies up until now.

STATUTORY AND CONSTITUTIONAL PROVISIONS SAFEGUARDING THE TRIBES

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [No.2 of 2007]

The Parliament of India enacted The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter called as Forest Rights Act, 2006) to correct the historical injustices suffered by the tribal communities. The Forest Rights Act, 2006 provides for restitution of traditional forest rights to forest dwellers across India, including individual rights to cultivated land in forested landscapes and collective rights to control, manage and use forests and its resources as common property.[30] It also lays down conditions for relocation of forest dwellers from *'critical wildlife habitations'* with their '*free informed consent*' and their rehabilitation in alternative land.[31]

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[28]Sujit Kumar Mishra, Development, Displacement and Rehabilitation of Tribal People: A Case Study of Orissa, 6 J. Soc. Sci. 197, 200-201 (2002), http://rlarrdc.org.in/images/Displacement %20and%20Rehabilitation%20of%20Tribal.pdf.

[29]Ibid.

[30]http://www.undp.org/content/dam/india/docs/DG/recognition-of-community-rights-under-forest-rights-act-in-madhya-pradesh-and-chhattisgarh-c hallenges-and-way-forward.pdf.

[31]Ibid.

Key Features of Forest Rights Act, 2006

The purpose of this Act is to recognize the rights of 'forest-dwelling scheduled tribes (STs)'[32] (one who has not cultivated the land before December 13, 2005 does not get the right to any land) and increase their participation in conservation and management of wildlife. Law provides the right to use and collect the following:

- Right to hold and live in a forest land as an individual or community and to cultivate land as to get livelihood
- Minor forests produce things like tendu patta, herbs, medicinal plants etc. which has been traditionally collected but does not include timber
- Right to claim intellectual property rights over the traditional knowledge related to biodiversity and cultural diversity
- Community rights such as cattle grazing on forest land
- Community right on fishing and collecting other products from water bodies.
- Any other traditional right enjoyed by the forest dwelling communities and scheduled tribes but it excludes the traditional right of hunting and trapping of animals[33].
- In case of development induced displacement, proper rehabilitation and resettlement should be given before eviction. The rehabilitation and re-settlement package must be mentioned in the Act.

Other important provisions

- S. 3 (i) [34] gives the forest-dwelling community the power to protect and conserve forest resources and utilize them according to their own traditions. It is a symbol of recognition by the government of the injustice meted out to the community in the past.
- Those who are cultivating the land but have no document can claim up to 4 hectares as long as they are cultivating the land for their livelihood.[35]

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[32]The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2, Acts of Parliament, 2007 (India); S. 2 (c) The members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for *bona fide* livelihood needs and includes Scheduled Tribe pastoralist community.

[33]Gochhayat, Sai Abhipsa, Project on FRA ACT 2006: The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (November 9, 2011). SSRN: https://ssrn.com/abstract=1957149.

[34]The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2, Acts of Parliament, 2007 (India); right to protect, regenerate or conserve or manage any forest community resource which they have been traditionally protecting and conserving for sustainable use.

- Those having a patta and government lease and whose land has been illegally taken away by the forest departments and whose land is under dispute between forest and revenue departments can claim that land.[36]
- The land cannot be transferred or sold to anyone except by way of inheritance.[37]

Nature and Extent of Forest Rights

The Act is the first legislation which laid down the process of determining the nature and extent of forest rights. Section 6 of the Act prescribes the process of recognizing and vesting forest dwellers' rights in the areas under consideration. In order to implement the Act, State Government has formed the following committees[38]:

1. State Level Monitoring Committee headed by the Chief Secretary;
2. District Level Committee (DLC) headed by the District Collector;
3. Sub Divisional Committee (SDC) headed by the Revenue Divisional Officer

The SDC examines the resolution passed by the Gram Sabha and prepares the record of forest rights. Finally DLC approves the records and hears the petition framed by the aggrieved party against the decision of SDC.

It is necessary for the claimants to be recognized and verified by the Gram Sabha as it has the final word on the nature and extent of individual and community rights.

The Government of India reserves the right, regardless of the provisions of the Act, to divert forest land for the government-managed facilities like schools, hospitals, water pipelines, community centres etc.

Constitutional Safeguards

The Constitution of India provides the Scheduled Tribes with the following safeguards[39]:

I. Educational & Cultural Safeguards

Art. 15(4):- Special provisions for advancement of other backward classes which includes Scheduled Tribes. Article 15(4) says that:

"Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.][40]

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[35]See Supra note 33.
[36]Ibid.
[37]Ibid.
[38]http://www.moef.nic.in/downloads/public-information/Agenda%20Item24082010.pdf.
[39]http://ncst.nic.in/content/constitutional-safeguards-sts. (Last retrieved at May 15, 2018).
[40]INDIA CONST. art. 15, cl.4

Article 15(4) has been used as a safeguard for protection of Scheduled Castes, Scheduled Tribes and Backward Classes in various arenas of society. There have been numerous cases where reservation in engineering, medical and several other courses has been upheld. This Article has a wide scope as compared to Article 16(4) and it is not an exception, but a part of the equality guaranteed under Article 15 itself.[41] SCs and STs tend to form a separate class by themselves, and they are outside what is called as creamy layer area, even specialized institutions like IITs are supposed to take care of such situation.[42] In this case, the petitioner alleged that the SC/ST students admitted into the prestigious institute (IIT, Delhi) were not allowed to further pursue their education on the grounds of poor performance, rendering the reservation provided by the Government of India redundant. The case was decided in favour of the petitioners based on the reasoning of the Court that-"*endeavours are to be made by providing additional coaching and to bring them up on par with general category students*"[43]. However, this cannot be considered as an appropriate means to meet the ends of justice.

Art. 29:- Protection of Interests of Minorities[44]: This Article also includes Tribes in the interpretation of the term 'minorities'. Article 29 provides two different pointers for protection of such interests:

(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same: Language and culture are a tribal identity and therefore, the same is to be protected in their interest, either by them or through anyone else.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them: This provision has been inserted to aid the holistic growth of the minorities, and therefore same could be utilized for development and protection of the Tribes and their people.

Art. 46:- The State shall promote, with special care, the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes, and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. [45]Inclusion of each and every section of the society is an important aspect of making justice accessible and ensuring

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[41]M. P. Jain, *Indian Constitutional Law*, 978-980 (8th ed, LexisNexis 2018).

[42]*Avinash Singh Bagri v. Registrar, IIT Delhi*, (2009) 8 SCC 220.

[43]Legal Correspondent, Court: IITs can't throw out SC/ST students for poor performance, The Hindu, August 26, 2009.

[44]INDIA CONST. art. 29.

[45]INDIA CONST, art. 46.

social justice. The concept of distributive justice has evolved from the Article 46. "Distributive justice comprehends more than accomplishing reduction of inequalities by differential taxation, or debt relief, but it also means achieving a fair division of resources among the members of society. This principle was established in the case of *Manchegowda v. State of Karnataka*[46]. In this case, the Karnataka government had served the petitioners with notices to show cause asking for reasons as to why should not the lands owned by them, that originally belonged to the members of SC/ST community, be retrieved by the government. The petitioners thus filed a case challenging the State Government. However, the decision was given in favour of the respondent, thus protecting the economic interests of the backward classes. Therefore, Tribes, who are under a disability are to be brought on same plane through distributive justice.

II. Social Safeguards

Art. 23:- Prohibition of traffic in human beings and beggar and other similar form of forced labour.[47] Article 23 proscribes three unsocial practices:

(i) begaar
(ii) traffic in human beings; and
(iii) forced labour [48]

When tribes migrate to cities, they undergo economic and social crises. In such a case, finding employment becomes a tough task and thus, they are forced into human trafficking, forced labour, begaar, prostitution, child labour etc. Thus, to protect the tribes from being exploited, Constitution has guaranteed them rights against exploitation through Article 23 and Article 24. Article 24 forbids child labour for children who are under the age of 14 years, and prevents the indulging of children into employment in factories or mines or other hazardous places.[49]

III. Economic Safeguards

Art.244:- Clause(1) Provisions of Fifth Schedule shall apply to the administration & control of the Scheduled Areas and Scheduled Tribes in any State other than the states of Assam, Meghalaya, Mizoram and Tripura which are covered under Sixth Schedule, under Clause (2) of this Article.[50]

Art. 275(1):- It provides for Grants in-Aid to specified States (STs & SAs) covered under Fifth and Sixth Schedules of the Constitution.[51] Fifth and

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[46](1984) 3 SCC 301.
[47]INDIA CONST. art 23.
[48]M. P. Jain, *Indian Constitutional Law*, 1286-1287 (8th ed, LexisNexis 2018).
[49] INDIA CONST. art. 24.
[50]INDIA CONST. art. 244.
[51]INDIA CONST. art. 275 cl. 1.

Sixth Schedules of the Constitution extensively deal with provisions for Administration and Control of Schedule Tribes, their affairs and Scheduled Areas.

IV. Political Safeguards

Art.164 (1):- Article 164(1) provides for Tribal Affairs Ministers in Bihar, MP and Orissa to manage and facilitate the tribal affairs[52], as these states observe a dense tribal population in certain parts.

Art. 330 and Art. 337:- Under Article 330, seats are reserved for STs in Lok Sabha.[53] Initially, this reservation was for 10 year, but it kept on extending for every ten years. Through the amendment of Constitution in 1999, this period was fixed to be upto 25 January, 2010.[54] Similarly, Article 337 provides for reservation of seats for STs in State Legislatures.

Art. 243-T:- It provides for reservation of seats in Municipality for STs, SCs and Women[55].

Art. 371-E:- Article 371-E has special provisions in respect of North-Eastern States and Sikkim, so to maintain the balance between the legislative law and customary law. In these states, priority is given to customary laws.[56]

Art. 339:- Under Article 339(1), President may appoint a commission anytime for welfare of Scheduled Tribes in a state, while Article 339(2) empowers the Centre to give directions to states for making and executing schemes for welfare of Scheduled Tribes.[57] Art. 339(2) is supplementary to Art. 275(1),[58] and thus, furnishes the raison d'etre for Article 339.

However, due to lack of awareness, complexity and inaccessibility to legal aid, these safeguards, though multiple in number, could not truly suffice for the purpose of protecting and preserving the tribes, tribal rights and culture.

CONCLUSION AND SUGGESTIONS

It is established beyond any doubt that the tribes in India are facing a number of problems, all of which are somehow connected to the issue of massive displacement movements that are going on in India. The continued existence of the problems faced by the tribal community highlights the absence of a clear and efficient Resettlement and Rehabilitation policy which calls for in-depth research in order to improve the development and resettlement policies. These policies should be well-planned as well as inclusive and considerate of the fundamental rights of each and every individual of the community. The

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[52]INDIA CONST. art. 164 cl.1.
[53]INDIA CONST. art. 330.
[54]The Constitution (Seventy-ninth Amendment) Act, 1999.
[55]INDIA CONST. art. 243-T.
[56]INDIA CONST. art. 371-E.
[57]INDIA CONST. art. 339.
[58]See Supra note 50.

government must make sure that benefit of the compensation package provided by it reaches the actual victims of resettlement and that the heritage of the tribals is not lost, that is to say that they must be in synchronized with the needs of the tribal community. There are a number of safeguards available in law, but the complexity and lack of knowledge are the reasons due to which the tribes, who are the true beneficiaries of such provisions, are unable to access and utilize them.

One of the prominent reasons behind the failure of government policies is the weak Ministry of Tribal Affairs. The Ministry of Tribal Affairs has a questionable functionality and it apparently only serves to collect incomplete, half-baked statistics of tribals' status and eviction and preparing reports for bureaucratic consumption rather than protecting their interests in a practical, substantial manner. It is important here to understand that the implementation of policies and legislations made for the benefit of the Scheduled Tribes must be effective. Technology is a priceless boon, and so is nature. Both bear humongous importance for human development in contemporary era. But, it should not be forgotten at any point of time that technology needs to be utilized; to support implementation of schemes and policies, and make the processes easy, efficient and effective. The Forest Rights Act, 2006 clearly states that the community will have the right to preserve, protect and develop resources for sustainable use.[59] To turn such an objective into reality, there is a strong need for work to be done from grass-root level. Strengthening the capacity of Gram Sabhas to manage, protect, preserve and add value to community assets is essential for achieving such a goal. A massive challenge exists in reaching out to people with simple and critical messages that prepare them to demand their rights as a user and dweller of the forests under the Forest Rights Act, 2006. Information spreading campaigns should have multiple methods and dimensions to reach out to the people. Lastly, one would like to conclude that economic progress of the country is very important but it cannot and should not be at the cost of the people. They can neither be ignored, nor forgotten. Development is for people; for their ease, not to add to their troubles.

[59]The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, No. 2, Acts of Parliament, 2007 (India); S. 3.

CHAPTER 2

Changing Concept of Tribal Justice: A Brief Conspectus

Adherence to the 'legal pluralism' within the framework of governance[60] demonstrably signifies mutual respects and freedom to every community to pursue its aspirations, customs and beliefs, culture and traditions, in brief, to proscribe cultural coercion and to promote the preservation and enhancement of the multicultural heritage of the country. Thus, the 'indigenous' and 'socially advanced'('non-indigenous') societies, through practices, have characterized and defined *jural relations* and *'justice system'* within their respective realms, however, in both the societies the inherent superiority of 'rule of law' has been emphasized in different dimensions. The remarkable feature is that though Indian Constitution has invariably endorsed the autonomy to such tribal *sovereign* within its federal framework[61] however, the said approach got homogenized with the hegemony of formal justice system to the tribes living in plain landmass of the country. The traditional legal recourse of the tribal community, i.e., informal access to justice system in apolitical methods of community mediation to resolve disputes is affected by legal imperialism. A comparative analysis would evidently appreciate that the principal characteristics of dispute resolution mechanism in '*indigenous justice system*' are *easy accessibility*[62]*, informality, economy of time and money, familiarity of legal norms and speedy enforcement* while in formal '*justice system*' focus is upon *reasonableness, uniformity of*

[60]Specific provisions like Articles 15(4), 29, 30, 46, 244, 244-A, 330, 332, 334, 335, 338, 340 342, 366, 371A, 371G of the Constitution of India.

[61]22nd Constitution (Amendment) Act, 1969 introduced the provision of Schedule – VI for the formation of Autonomous State in Tribal Areas. For example the autonomous council granted to Tripura Tribal Areas Autonomous District Council in 1985, Bodoland Territorial Autonomous Council in Assam in 2003 under the Schedule – VI of the Constitution of India.

[62]Social pressure to ensure attendance and participation enables voluntary participation in the dispute resolution process.

law and procedures, and *state legitimacy*. In customary justice practices the legal tradition values the restoring of harmony and social cohesion within the community thus, the penal measures followed in the customary practices are primarily focused to the possible extent towards reaching compromise or else emphasis on restorative penalties. In short the content of formal justice system much focused upon '*due process of law*', i.e., procedural while the content of '*indigenous justice system*' predominantly substantive. The present discourse is an analysis dealt with the legislative attempt of strategic planning relating to institutional designing of synergic approach through the judicial agencies of the country[63] to appreciate the space between the structures, legal traditions and practices between '*Indigenous*' and '*Non-Indigenous*' justice systems of the country.

The structural differences of institution of governance in due course of time evolved out of acculturation, humanity, interrelationships of nations and contributed in polarizing the diverse community-ecosystem with structural adjustment process and sustained links between the natural and human orders in the society. The transmutation in the backdrop of existing structures and organizations of the natural world and the economy of nature edified the flourishing of wise-dispositions of modern socio-cultural, economic, functional-governance mechanisms in the social orders. Thus, the social organizations closely associated in exploratory operations have set new institutional social orders and governance patterns with its social hierarchy and administrative systems in modernized society for the dispensation of justice.

The 'objective value' of governance among indigenous community-states of India was eclipsed with the colonial takeover, importantly, by the Mughals and the English. Military fiscalism, that is, collection of revenue with the deployment of armies was the common feature in both the transitions of invaded India. The onslaught of economic prosperity coalesced with the retention of political control characterized economic and political re-alignment amongst the regional political rulers and the imperialists – resulted in the consequential intervention and encroachment upon the forestry – the natural habitats of the tribes in India. Increased commercialization and monetization of economy surfaced to the centre-stage of the governance system of the interventionists' state-apparatus and prevention of what resulted in uprisings of the Tribes. Linguistic and cultural interface between interventionists' state apparatus and indigenous communities triggered the increased neglect mutually to the cultural dimensions to each other. The historigraphic corpus explored through various scholastic journeys has confirmed such tribal uprisings. For example, during

[63]Report No. 80 on Synergy Between Tribal Justice System And Regular Justice System Of The Country, presented to the Rajya Sabha on Mar. 10, 2016

medieval India communities' access rights to forests under traditional systems of forest management was outlasted by the imposition of the restrictions[64] by the British imperial powers declaring forests as national property. The categorization of different tracts of the country on the scale of backwardness as characterized by British[65] changed the dynamics of the socio-cultural landscape relating to representation of voice in the administration and reforms of the backward communities. Distinct arrangements between the tribal Heads and colonial administration was entered into and effectuated by enlarging the administration of justice to the Tribal groups for smooth realization of economic rents as well as to prevent the civil disobedience in the country. Post independent era however, continues to follow the colonial line of administration of justice. And the solvent influence of the interventionists continued to give shape the contemporary development of legal systems and culture of legality in the legal system of *Non-Indigenous* society. Thus, the customs and laws of the colonizing country were gradually substituted by installing over-representation of the new legal order of the conquerors resulting in laying down the foundation of systematic inaccessibility of *indigenous* people, in *de facto* manner. And the revisionists' present reformatory attempt to evoke consolidated, coherent and uniform system of governance by crossing the significant barrier and viewing at the prosperity of 'justice' has so far been crystallized into distinct profiles.

Every legal system is the creative expression of the society that encapsulates the legal tradition, culture, values and that the cultural dominion in the governance-apparatus plays decisive influence in achieving convergence of diverse legal systems into more productive and coherent one. As David Nelken has aptly stated that cultural variants shape the legal attrition of the society and 'rule of

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[64]In 1807 East India Company acquired royalty rights over teak and engaged Conservator as sanctioning authority for teak felling and selling resulted in prohibition of unauthorized teak felling and selling even by the locals. In 1846 the jurisdiction of such sanctioning authority was extended to all forests and forests produce and ventured to plunder unrestricted extraction of timber from all forests. In 1860 East India Company's sovereignty extended to the total area of forest land. Contribution of the forest-dwelling communities to accommodate the rebels of Sepoy Mutiny in 1857 led the Company administration to prohibit and withdrew all traditional access rights and privileges to fuel, fodder and other local uses also. To validate such illegality and suppress the traditional claims of the communities in 1864 the Imperial Forest Department was set up to consolidate Government control over forest and forestry making it inaccessible to forest dwellers. Since then on different occasions like in 1865, 1878, 1927 various Forest Acts were promulgated to legitimize the government's control over forests of the country.

[65]Like the implementation of the recommendation of Montague-Chelmsford Report of 1919 for the representation of voice of natives in the administration of the Provinces was not given effect to certain Excluded Areas/Partially Excluded Areas – the habitats of the Tribes in India (Simon Commission Report 1930 – the legislation on what was The Government of India Act, 1935).

law' is the culture of legality.[66] The dynamics of attaining axiological democratic institution through synergic approach in justice system demands a fair coexistence of cultural settings in the socialization process, what in turn, would dilute the institutional coercion from the minds of the tribes rather would evolve slow growth of moral equality and positive impartiality. The justice system evolved traditionally in tribal communities through cultural adaptation of the values of consensus and community participation followed by the customary norms are the sources of just procedures and hallmark of tribal justice, per contra, the formal justice system, to certain extent works against the relationships and cultural life ways of the tribal members. The dichotomy between these two justice systems lies in: a) organic notions of justice, and b) methods of dispute resolution, and, these two elements maintain the integrity of identity of the subjects and act as guidance to behaviours of the subjects. The essence of dispute resolution mechanism in '*tribal justice system*' is speedy disposal through community-conferencing and little instrumentation regarding the enforcement mechanism for compliance. It is the cultural values of the customary practices and norms that ensure the efficacy of the governance mechanism. The attempt of alignment of 'tribal justice system with regular justice at the root level'[67] to set a uniform social order requires structural and processual alignment of both the systems what manifests the acculturation and orientation of such values in the governance pattern. The speedy disposal in *formal justice* system, with the passage of time, becomes the recurring challenges in regular justice system which is antithetical to the tribal justice system while strict adherence to the enforcement mechanism for compliance is the other. The expectation to provide the 'benefits of regular justice system' to the tribal people[68] seems to be primarily compensatory measures, for, the unique jurisprudential approach of tribal justice system is more concentrated on restoration and social cohesion and not different objective parameters on 'Due Process of Law' as in formal justice system has set. Thus such reservation of benefits for the well-being of tribes would diffuse the authority of tribal sovereign and play out the 'living concept' and value of governance of the tribal justice system.

Article 40 of the United Nations Declaration on the Rights of Indigenous Peoples provided that Indigenous peoples have the right access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes……with due consideration to the customs, traditions, rules and legal

[66]David Nelken. THINKING ABOUT LEGAL CULTURE. Legal Studies Research Paper Series: Paper No. 2014-33, King's College London Dickson Poon School of Law, at 7.

[67]Department Related Parliamentary Standing Committee on Personnel, Public grievances, Law And Justice, Government of India, Report on Synergy between Tribal Justice System and Regular Justice System (No. 80 submitted on Mar 10, 2016), 29 at 22

[68]*Id.,* 30

systems of the indigenous peoples concerned[69]. This provision is the replica of the principle of self-governance and the British Imperial governance mechanism run smooth administration leaving it to the tribal communities. The strategic arrangement with the indigenous people to improve and deliver uniform and effective justice system has achieved new importance after the report submitted by the Parliamentary Committee in the year March, 2016[70]. The inevitable question appears as to how far the development of strategic planning by justice agencies would lead to culturally-sensitive improved outcomes. To influence the particular legal tradition of the tribes to achieve the evolution of uniform legal order of the country inherently is a collective venture. The process of *socialization* of scheduled tribes in Post-Independent India sailed its journey to bring them within the fold of mainstream society through *'developmental programme'* and *'proportional equality principle'*. Blueprints of major reformatory steps accentuated by the Government to make changes in the socio-economic conditions of the indigenous people for long seven decades still around 8.6% population of the country[71] has been estimated the socio-economic conditions of who are yet to be addressed for reconfigurations. And how far such changes in socio-economic conditions of the indigenous have been able to sensitize their cultural attributes is one area to be explored before making a uniform justice system in the country. The corrupt practices and misappropriation of development-funds by different operating working forces of advanced society have placed least reactionary disputes and less number of tribal populations are at risk and nor even resolved the intractable problems of them. In addition, the political influence that culminates in the advanced society appears to them to be insignificant. The complex web of legality of culture of advanced society may evoke contemporary challenges to the tribal societies in the event of synchronization of both justice systems.

The social outcomes of Socio-Cultural Awareness programme with welfare measures of the State defaced to achieve the desired effect due to cultural incompetency. By Cultural Competency meant capability to mutually accomplish, accommodate, and harmonize the wide range of demographic and socio-economic characteristics and the substances of cultural needs of the people of the communities. In the Report the awareness programme has been emphasized however, the cultural competency has not been recognized. The proclamation of disfellowship during colonial regimes ostracized the *tribes* from the

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[69]Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, Annex, U.N.GAOR, 61st Sess, Supp. No. 53(Vol. 1), U.N. Doc. A/61/53 (Vol. 1), at 13 (Sept. 13, 2007)

[70]*Supra note* 8

[71]The Indigenous World 2017 Report (UNDRIP). International Work Group For Indigenous Affairs (IWGIA), 2017 (Ed. Katrine Broch Hansen, et.al.)Classensgade 11 E, DK 2100 – Copenhagen, Denmark, at 384.

mainstream of the society while the *socialization process* through welfare measures was undertaken to provide *cultural safety* and *cultural awareness* however, to accommodate the cultural needs of marginalized indigenous courtroom participants has never been weighed to facilitate the access to the *formal justice* system. Poor understanding about indigenous society by the functionaries of Legal institutions under formal justice system actualize the erosion of the attrition of formal justice system in the perspectives of the indigenous people. In the socialization process of acculturation the progressive move has always been designed expected the initial move from the end of the tribes. It is suggested that for achieving the desired goal as set in the synergic attempt of two distinct justice systems for the dispensation of justice instilling the value of governance should statutorily be recognized to make the functionaries of the Legal Institutions culturally competent. Liberalization of trade has made the spur of streamlining of the legal mechanism for facilitating the smooth operational benefits of trade and the attempt of synchronization to bring uniformity two distinct justice systems is but one dimension of such progressive move. Fact that the geographical areas of the country that are abundant of natural resources are mostly populated by the tribes, be it the mineral resources or pharmaceutical resources. The transitional colonial periods proved that misappropriation and plundering of the resources are the by-products of increased commercialization and monetization of the economy. The changing dynamics of ecological habitats of the country on the basis of psychological race of progressive move of development has set new social order in governance, i.e., transposition of risks. To edit the impact of human rights advocacy amongst Tribes in India and increased ascendance of neoliberal values in social spectrum for Sustainable Development Goals Programme recalls the attention to the important aspects, *viz;* Access to Justice, Dispensation of Justice, and Sentencing practices. Progressive move of modern institutions of governance with the modern means of production, and distribution towards privatization through PPP model is but the consequential conversion of sovereign risk to enterprise risk. The influence and implementation of human rights has failed to provide the transition justice to those who bear the brunt of human civilizations. The synergic attempt of social inclusion through the judicial agencies without emphasizing upon the percolation of values of governance would create another deprivation of rights to the tribal population of the country.

CHAPTER 3

Mainstreaming Tribal Children Through Ashram Schools: A Qualitative Study

Introduction

'Scheduled Tribe groups have traditionally lived in more remote areas of the country and in closer proximity to forests and natural resources. The remote and difficult geographical terrain inhabited by Scheduled Tribes has isolated them from mainstream Indian society. This has afforded them a measure of cultural autonomy and economic independence. However, modernization and accumulative processes of production have resulted in massive encroachment into their natural habitats. This has in turn resulted in displacement, poverty and heightened levels of exploitation through a system of bonded labour. The term 'double disadvantage' has been used to characterise the socio-economic and spatial marginalisation of Scheduled Tribes in India' (Sujatha, 2002).

Literacy and educational attainment are powerful indicators of social and economic development among the backward groups in India. Currently, the tribes lag behind not only the general population but also the Scheduled Caste population in literacy and educational attainment (Sahu, 2014). One of the major challenges in providing education to tribal children relates to setting up school facilities in small, scattered and remote tribal habitations. The majority of the Scheduled Tribes live in sparsely populated habitations in the interior and in inaccessible hilly and forest areas of the country (Sujatha 2000). High poverty rates and dependence on agriculture call for increasing rates of child labour force participation among many of the tribes in India. The tribal dropout rate is extremely high relative to the mainstream population. Children often enroll in primary education and then drop out of school in order to help the family. The dropout rates of both boys and girls increase sharply as their educational level increases (Jha and Jhingran, 2002).

Over the last two decades, the government has increased elementary school provision (grades I-VIII) in and near tribal hamlets, and this has significantly increased rates of enrolment. However, issues of quality and relevance of schooling for ST children have barely received any attention from the national government. The poor quality of infrastructure and teaching, and a curriculum that does not relate to the socio-cultural lives of the Scheduled Tribes nor teach about their history, have all contributed to the communities' disenchantment with schooling. Micro-studies by Subrahmanian & Jefferey (as sited in Sedwal and Kamat 2008)show that although Scheduled Tribe populations have a poor rate of success in the job market, individuals do internalize the hidden curriculum of schools that teaches them to devalue and reject manual labour as 'dirty', 'lowly' and a mark of ignorance. Many scheduled tribe students do not go for technical education because of the inferiority feeling (Savatikar, 2014). Moreover, the poor quality of schooling available to ST children does not prepare them to succeed at higher levels of education nor to compete for jobs, thereby demoralizing young people. Poor treatment in school and loss of self worth leads to drop out (Sedwal and Kamat 2008).

Another important causes of educational backwardness of the tribe and their comparatively inferior educational performance has been because they are taught through regional language and not through mother tongue. If the medium of instruction in the primary schools was the mother tongue of the people, the children could have picked up their lessons easily and produced satisfactory results. The textbooks depict mostly the urban and non-tribal culture and ethos while they have no relevance to tribal cultural context. The internal teaching methods adopted in the classroom are strange to the tribal children who has different socialization pattern in its community where group learning is prominent, pace of learning is independent. Being most of the first generation learners, children feel conflict with the rigid and structured school system while their cultural norms are flexible and suitable. This leads to conflict among students resulting with developing culture of silence in learning process (Rani 2010).

Government spend a large amount as incentives for tribal students, but the intended target group often does not receive the benefits of it. This is partly due to lack of awareness among Scheduled Tribe parents about the nature, quality, quantity and mechanisms involved in the distribution of incentives. As a result, poor enrolment, absenteeism, wastage and a lack of quality of education continue to be serious concerns in ST communities (Reddy 2000).

As education is seen as the major tool to mainstream the tribal population, many policies and strategies have been implemented since independence. Over time these policies are been modified and amended but the Ashram school scheme seems to be the best way to bring tribal children to education. Ashram schools are centrally sponsored scheme, operated by the States to impart formal

education to tribal children, with special focus on primitive tribal groups (PTGs). The group of tribals who have following characteristic features have been classified into PTGs: (i) tribes still practicing pre-agricultural technology, (ii) extremely low level of literacy, (iii) near stagnant or diminishing population (Rani 2009). The new terminology for Primitive Tribal Group is Particularly Vulnerable tribe (Ministry of Tribal Affairs).

Ashram Schools has evolved from the ancient 'Gurukulas' which existed in India in Vedic period, where Guru-Shishya reside together, learn from guru and help guru in day to day affairs. 'Ashram schools' were initiated by Thakkar Bapa in 1922, for tribal population in Western India. The first Ashram school was started in in Panchamahal hills of Gujarat for tribal children. The First Five Year Plan, initiated opening up of Ashram schools and under Third Five Year Plan, it was widely establised. Realising the success of Ashram schools in Maharashtra and Gujarat, Dhebar commission in 1961, recommended to establish them in more interior, inaccessible sparsely populated areas where opening up of a normal primary school in each small habitation is not viable. Based on these recommendations a centrally sponsored scheme of Ashram schools was initiated in different states and later it was transferred to respective state governments (Mishra &Dhir, 2005).

The establishment of Ashram school was envisaged as a direct intervention to tackle the socio-economic and geographic inequalities of the tribal population, particularly sparsely populated areas by providing educational opportunities. Ashram schools are expected to reduce the incidence of absenteeism, wastage and stagnation and improve the standard of education at primary level. These schools provide free boarding and lodging facilities apart from supplying books, stationary, clothes etc (Mishra &Dhir, 2005).

The broad policy guidelines for Ashram schools as envisaged by various committees and study groups on tribal welfare programmes are:

1. Ashram schools should be inter-village schools
2. Ashram schools should be opened in such areas where normal schools cannot be opened
3. Most backward tribal groups should be covered

Tribal education in Kerala

The tribal population in Kerala is 1.10% (2011 census) of the total population which is least among the other states in the country. Even though Kerala is the most literate state in the country, with high Human Development Index, the poor condition of tribal population is a paradox in the State. National Commission of Scheduled tribe described the situation of tribal population in Kerala as 'Pathetic' due to the deprived condition of the people who lack even the basic amenities (Namboodiri 2015).

Tribal literacy program was launched under the Total Literacy Program under the State SaksharathaSamithi in 1991, which was a major initiate for bridging the tribal population to education. Even though the program could not achieve the desired result, 64,000 tribals were made literate. State Scheduled Tribe Development Department introduced consistent programs for improving the education level among tribals through various program like incentives for tribal children, opening of Anganvadis/ Balvadis in neighborhood, providing free books and study materials and residential schools for tribal children.

The first Model Residential School was started in 1991 for the tribal children. The first Ashram school in the State was established in 1991-92 for providing quality education to children from PTG. Even though Ashram schools were initiated in the country during the First Five Year Plan, it was established much later in the State. At present there are 13 Model residential schools and 5 Government run Ashram Schools in the State.

Right to Education Act and Tribal education

Right to Education Act, 2009 is a milestone in attaining universalisation of education, which tries to reduce the social exclusion in education in the country. The act has reassured the article 21A of Indian constitution stating free and compulsory education should be provided to all children of the age of 6 to 14yrs by the State. The act was passed in the Parliament on 4 August 2009 and was enforced on 1st April 2010. The act is a major step towards imparting elementary education to all children which not only tries to bring equal opportunity to children from all strata of society but also to improve the quality of education in the country. According to the act the every child in the age groupof 6 to 14yrs will be provided 8yrs of free education in their neighbourhood. RTE is significant in terms of inclusiveness and also providing quality education to students. Imparting quality education to tribal children has become compulsory according to the Act. Not just increasing the enrolment rate but also reducing dropout rate is also a challenge. Based on the RTE Act 2009, the State of Kerala has passed the rules on the right of children to free and compulsory education Kerala 2010. Here researcher has tried to see how the act is beneficial to the tribal students who are the most vulnerable section of the society. And also to find whether there are any provisions under the Act which will impart quality education to tribal population.

Methodology

The Kerala stands out from the rest of India with 94 percent literacy rate, but the tribal literacy rate in the State is 72.3% (KILA,2011). There are 36 different tribal communities in the State with five from Primitive Tribal Group (PTG). The PTG forms 5% of the tribal population in the State. Low literacy rates in tribal communities continue to indicate a need for overarching support

that tackles issues from health to attitudes of non-tribal populations. Recognizing that the education system is currently designed for the dominant group, there needs to be investment in creating support mechanisms that supplement the assimilation of tribal children into the formal education system (Joy &Srihari 2014).Kerala has the lowest school drop out rate but when it comes to tribal students, it is high. A study conducted by Sarva Siksha Abhayan in 2016 reported that 992 tribal students dropped out in a year just from Kozhikode District. These facts point fingers to the quality of programes, strategies and budget spent for the progress of education among tribals. So it is necessary to look into the functioning of the school system, its quality and bottom level understanding of its implementation. As the Government spent more on tribal residential schools than on general schools (Ministry of tribal affairs), as school tries to meet all the education needs of a student from primary to high schools level, it is significant to ensure that the programme reaches the target population efficiently. The researcher has chosen Ashram schools for study as the schools functions for educating the children from PTGs in the State, who are more vulnerable and marginalized among the tribal population. The study was carried out in all five Government run Ashram schools spread out in the State. Study also collected the experiences of stakeholders in order to get an overall understanding of implementation of the scheme and also to know how the scheme has been perceived by children, teachers and other authorities. The present study is a descriptive case study which focuses on the whole scheme of Ashram School and the study tries to place the Ashram school in the context of Right to Education Act, 2009It is important to see the tribal education through the larger frame of RTE, as the act is the major path towards universalisation of elementary education in the country. One of the major objectives under the study is to analyze the RTE Act and to understand its inclusiveness of educating tribal children. The study has covered all the five Ashram schools in the State.

Analysis and Discussion

Unlike other schools in the State, these schools were hard to reach and situated near to forest.

Interview guide with teachers, students and principal; observation checklist for physical and residential facilities in schools; classroom observation and Focus group discussion with teachers and students were the major tools for data collection. Students were asked about the facilities like both physical and the learning materials obtained from the school. Their opinion on the teacher-students interaction and teaching methods and experience in the school has been collected. Some information about their community has also been covered in order to get a picture about the community's perspective on education and schooling. The teachers were interviewed and opinions were collected on

student's utilization of facilities provided, their constraints in teaching tribal students and their satisfaction in school. Most of the interviews were conducted during the lunch break or when the teachers had free time. Focus group discussion was also conducted to know their perspective on Ashram Schools compared to general schools and the challenges they address in the school. The number of parents interviewed were few, who visited their children on Sundays.

Establishment of Ashram Schools in the State

The land for establishment of Government Ashram school were provided by the State and the construction cost of the schools was based on 50:50funding from both Central and State according to the Ashram School Scheme. In 1995 all the Government Ashram Schools were registered under the Kerala Scheduled Caste and Scheduled Tribe Education Society according to Kerala Charitable Society Act. The Government Ashram Schools which were established before 1995 were functioning directly under the State Scheduled Tribe Development and which were then registered in the society. Presently, the society is in charge of all the functioning of Ashram Schools like appointment of staff, teachers and operation of day to day activities. The Secretary of State Schedule Caste/ Scheduled Tribe Development Department is the President of the society and it is run under the chairmanship of District Collectors of respective districts.

Infrastructure and conducive environment at School

It is observed that most of the facilities are been provided according to Right To Education Act, but the quality and quantity of the facilities are not necessarily matching with the provisions. Table 1 shows the infrastructure facilities available in different schools. Inadequate number of classroom, poor classroom conditions, insufficient number of computers for students, insufficient facilities in science lab is observed in most of the school. Even though there are libraries in every school, the function of a library has been rarely met. As most of the students are weak in language, students do not read in the library. Teachers also do not encourage students in gaining information outside the textbook. The RTE Act, 2009 states that the school should be all weather building, which is been followed by most of the schools. But in one school, the primary classes are in tiled roof building and so during monsoon the roof leaks and it disturbs the class. And in another school, hostel room where boys of primary class stays is of tiled roof which leaks during rainy days. And therefore beds get wet and students have to move the bed accordingly.

Play ground is not available in every school. Some schools have poorly maintained play ground which are covered with grass. But all the schools conduct annual sports meet in the school, as games and physical training is made a part of the curriculum and the report has to be sent to the monitoring authority.

Table 1: Showing Infrastructure facilities in Schools

Sl no	Particular	School 1	School 2	School 3	School 4	School 5
1	Classroom	Adequate	Adequate	Adequate	Adequate	Adequate
2	Library	Adequate	Student's hostel room was	Adequate	Adequate	Adequate
3	Science lab	Adequate	Adequate	Adequate	Adequate	Adequate
4	Computer lab	5 computer for 25 students	4 computer for 20 students turned to library. No Separate library hour for students	4 computer for 20 students	5 computer for 25 students	7 computers for 35students
5	Hostel for students	Yes, Notadequate facilities	Yes, Notadequate facilities	Yes, No tadequate facilities	Yes, Not adequate facilities	Yes, Not adequate facilities
6	Quarters for teachers	Not available	One of the girlshostel convertedto female teachers to stay. Separate quarters for male teachers.	No	Separate quarters only formal eteachers	Separatequarters
7	Playground	No	No	Yes	Yes	Yes
8	Compound wall	Yes	No	Yes	Yes	Yes

The Ashram school scheme recommends separate hostel for boys and girls with well-ventilated dormitory, room for hostel warden, common room and dinning/kitchen. Separate hostel facility for boys and girls is available in every school. Most of the hostel rooms have an average of 15 students, where the beds are arranged adjacent to each other and there is minimum space in the room to move. The hostels for primary classes are small and congested in School II. The condition of room is not satisfactory in any of the schools except School V. Only School V have separate room for warden and in other schools the warden or the concerned teacher sleeps with the students. There is kitchen and dining hall in every school. Most of the schools have big and spacious dining hall.

One of the major objectives under the Ashram school scheme is to improve the interaction between teachers and students and provide individual attention for the overall development of students. And so the scheme proposes teachers accommodation in school campus to make them available for children at all their needs. But most of the schools do not have quarters for teachers in the school campus. In School II, lady teachers were accommodated in the girls hostel rooms. In School IV, male teachers have separate quarters but female teacher do not have. In School V separate quarters is available for teachers. It is seen that teachers prefer to stay in the schools as most of the schools are located far from main town but the schools are not able to provide good facility quarters for them. As most of the schools accommodate teachers in hostel rooms, the space for students in hostel get smaller and they have to adjust in small rooms. Even though the whole objective of Ashram school lies in Gurukula System where teacher and students reside together and all round development of students are paid heed, most of the schools do not have accommodation facility for teachers.

As per the scheme there is hostel for students but it is observed that there are certain facilities needed in the hostel rooms. The hostel rooms do not provide any cupboards or racks for students to keep their belongings. Some of the schools provide trunk box to students for keeping their belongings but most of the time they are found to scattered in the room. Books are also seen to be kept on bed or floor after studying. The scheme doesn't talk about the facilities to be provided in the hostel and so there is no separate budget allocated for the schools to meet the needs.

RTE Act talks about securing the school building with boundary wall. All the schools have boundary wall except in School II.

Human resources

On an average there is 23 staff in every Government Ashram Schools including teaching and non-teaching staff. According to Act, 50% of the staff should be women and it is observed that 80% of the staff in every school is

women including teaching and non-teaching staff. The schools provide employment opportunity to tribal people by appointing teachers, cooks, maids and cleaners from the tribal community. All Government schools have a Superintendent, appointed by the Integrated Tribal Department Program (ITDP) who is in charge of the administration of school and Headmistress who looks after the academic functioning of school.

In-house training on curriculum, teaching practices and capacity building is been mentioned under both RTE and Ashram school scheme. Teachers from Government Ashram schools attend the training as the school encourages them by giving incentives. Most of the teachers who come to Ashram schools do not have much understanding on its working and they see these schools just like other schools. These in house trainings do not impart any understanding on Ashram schools or on tribal culture or practices.

There is no admission test or capitation fee collected from students during the admission according to the RTE rules and the Ashram School Scheme. Schools do not ask for documents regarding age proof of student which most of them do not have, which is also mentioned in the RTE. Government schools accommodate children from Primitive Tribes and schools has been categorised based on the tribal communities. School I has children from Kattunaickan of Wayanad district , School II for Paniya and Adiya tribe of Wayanad district, School III for Kadar, Kurumbar and Kattunaikan tribes of Palakkad district, School IV for Kattunaikan and Cholanaickan tribes of Malappuram district and School V has all tribal children across the State.

The Ashram School Scheme mentions that each class can admit 35 students and total strength of the school should be 350 from primary to high school level. In some cases the Government Ashram School admits more than 35 students in primary classes as per the students coming and so School I (453) and School IV (394) has more than scheduled intake.

The teacher student ratio should not be more than 1:35 in accordance with the Scheme and the RTE rule. Most of the Government Ashram school maintains that while in NGO school the ratio is 1:25.

Even though both the Scheme and the RTE Act is silent about the need of Social worker in schools, 3 among the Government Ashram schools have Social workers. The Social workers who are appointed recently to the schools took lecture and classes on personal hygiene and other topics said by the teachers. Most of them were of the opinion that the schools did not give them freedom to intervene with students which do not bring intended benefit to children.

Teaching- learning practices

The RTE Act mentions that the curriculum should make the child free of fear, trauma and anxiety and help the child to express views freely in class. And emphasises is been made on the learning through activities, discovery and

Table. Showing available Human resources in Schools

Sl no	Particular	School 1	School 2	School 3	School 4	School 5
1	No of students	453	327	320	394	400
2	No of staff (teaching &non teaching)	26	20	21	23	26
3	Tribe	Kattunaikan	Paniya and Adiya	Kadar,Kurumbar &Kattunaickan	Kattunaickan& Cholanaickan	Students from allscheduled tribespreferably primitive tribes, from all over Kerala
4	Teacher student ratio	1:30 till highschool and1:11 in hig her secondary	01:20	01:22	01:30	1:22 tillhigh schooland 1:12 inhighersecondary

exploration in a child friendly and child-centered manner. The act also suggest the incorporation of community knowledge in classroom. Even though the Ashram School Scheme do not talk about the child centered teaching practice, it mentions on transferring community knowledge to students. The scheme says that the curriculum should include information on tribal culture and practices. It is observed that students participation is more in classes taken by experienced teachers, who has been teaching tribal students for more than 3 years, teachers who stay in school and teachers from tribal community, were students interact more during class, share about their community. This can be due toteacher's knowledge on students understanding and relate textbook lessons with life experience of the students. Majority of the schools have young teachers who have experience in teaching for a year or less. Most of them are unaware of the tribal community and their culture.

RTE Act has mentioned that the medium of instruction should be in regional language or mother tongue according to the practicability. Language is seen as a challenge among the tribal students who have different dialect of their own. Even though students learn to speak Malayalam after coming to school, they find it difficult in writing. The difference in pronunciation of the language, conventional method of teaching language can be the reasons for their poor language skills. But it is evident that most of the students have problem in language learning. It would be better to use local language in Primary classes and then a gradually change to regional language. But there are few teachers and study materials in local dialect which has to be developed. All schools provide text books, note books, pen and other necessary items to students at free of cost.

Extracurricular activity

One of the major objectives under Ashram school is to make school a cultural learning centre through teaching students on tribal songs and dance. In School 1 and School II has music classes during which teachers teach them songs and also students perform their dance and songs but most of the times these period are been used for other subject classes.

The Government Ashram schools do not provide any vocational/ craft training for students and also they do not impart knowledge on tribal arts like dance or songs. Dance and Music is part of tribal culture (Hassena and Muhammed 2014). Even though one of the major objective under the establishment of Ashram school is to be a centre for cultural learning for tribal students but the schools do not provide the same.

Parent's participation in the school

Both RTE Act and the Ashram School Scheme mention about parents role in the school. The scheme states about Parent Teacher Association and the

Act states as School Management Committee (SMC) comprising of parents, school staff and local authorities. Every school has PTA including Parents and School staff. Parents do not have much role in the meetings as most of them are illiterate and unaware of the school system. In all schools the meeting is conducted in the starting of the academic year, this was basically because of the unavailability of parents during other times. All the schools provide travel allowance to parents to attend the PTA meeting. The major reasons of absence of parents in meetings are mainly due to migration of parents to other places in search of job, as most of them are plantation workers or agricultural labourers, they lose a day's wage on attending the meeting.

Monitoring and Evaluation of School functioning

Absence of effective monitoring system is a major drawback in the Schools. Schools rarely have monitoring visits due to their location that makes it difficult for the authorities to reach. Only one among the Government Ashram School has frequent monitoring visit. This might be one of the reasons for its better facilities compared to other schools. Enrolment rate, drop out and facilities in the schools are been evaluated by the monitoring team.

Stakeholder responses

Information has been collected through interview schedule and focus group discussion from different stakeholders like teachers, students and parents. Informations were collected from parents, when they visited schools on Sundays.

Students: Data has been collected from 20 students through interview schedule. Focus group discussion with 10 students from high school who have been in the school for more than 5yrs. Majority of the students are happy with the infrastructure and physical facilities provided by the school. More than 50% of students said that there were children in their neighborhood who drop out from school and spent their time in playing around and watching TV. All of them said that their parents wanted them to study well and never allowed them to stay back at home after vacation. One of the child in the primary class shared his experience once when he stayed back home, during their festival in their village the possessed God asked him to go to school. Some of the girl students pointed out the inadequate facilities in hostel room like congested hostel room, dim light because of solar bulb, no separate study room. They are happy with the food provided and nobody skipped the meal. Everybody agreed that they like to be in school and preferred residential schools than general, a few who favored for general schools were male students who wanted to go for fishing and hunting in forest. Most of the students have good relationship with teachers, as they are always in school with the students. They shared about their family, community and problems in studies with teachers. Most of the

students do not have problem in understanding the classes but still most of the students had problem in writing Malayalam.

Teachers: Most of the teachers are of the opinion that the tribal students are difficult to teach as their level of understanding is different as compared to other students, due to their isolated and unexposed living situation. It is seen that most of the teachers had opinion that students are not interested in learning, some teachers said that '*they are difficult to be taught compared to other students'*. According to the teachers including the tribal teachers Ashram Schools restricts the students in mingling with other students as most of the schools accommodate only students from same tribe, the socialisation of students is been limited. They anticipate that this might affect the students' confidence and isolate them in other institutions when they join for higher studies where they have to learn with the other students. Teacher 1 critics the whole scheme of ashram school as

> 'Why *students are been kept in without knowing the outer world. They see only teachers and the school.. this is the only world for them. Once they finish the school, they will not be able to mingle with the other children. Giving them food and facility do not bring any change in their condition. This is not the way it has to be done.'*

Parents. Data was collected only from 5 parents who came to meet the students on week end. Majority of the parents were illiterate and they work in plantations. Some of them were reluctant to talk and they spoke in their own dialect. Most of the parents were happy with infrastructural facilities and the food provided in the school. Some of them had food from the school on the day of their visit. Most of the parents said they want their children to learn well and be in a good job. The residential facilities in the school were really advantageous for the parents as all their children's needs were met by the school. Parents do not much interact with the parents other than when asked to by the teachers. They talk to their children and some of them bring food or fruits for them. Some of the parents do not come to meet students but they call to school and talk to their child.

Funding. The scheme allocates Rs.36,000 per student in a year which is been met by the central and the state and the amount is been provided to all Government Ashram Schools quarterly. It is seen the provision of funding on time and the support from the Tribal Development Department varies with the location of the schools. The schools in Wayanad and Thiruvananthapuram do not face any problem in receiving the funds as the schools are located under the jurisdiction of Scheduled Tribe Development Commission and State Tribal Development Department. While in other schools there is irregularity in receiving fund.

Right to education and inclusion of tribal children

The Right to Education Act, 2009 has made free and compulsory elementary education to all children in the country. Which therefore puts the inclusion of tribal children to the education system. The research has tried to analyse the functioning of Ashram schools in terms of tribal inclusion.

The study has shown the RTE Act has made the officials to bridge tribal students to schools through effectively identifying tribal children from tribal hamlets and also monitoring to reduce dropouts. At a large school provisions are according to the RTE but most of the time the quality and the efficiency at which these schools functions are to the minimum. From the interview with students and parents it was found that most of them are satisfied with the facilities provided to them in schools even though some students' complaint about the inadequate facilities in hostel. Most of the children and parents prefer for residential schools over the non-residential schools. They are not aware of what they are entitled to through the Ashram School Scheme or as per the RTE guidelines instead they compare the facilities with what is available at Home. Most of their needs are met which otherwise would not have been possible in their families. More than the education parents see Ashram schools as an economic ameliorant. And so students and parents fail to see the inadequacy of the schools functioning according to the standard.

Most of the teachers are of the opinion that the tribal students are difficult to teach as their level of understanding is different as compared to other students due to their isolated and unexposed living situation. According to the teachers including the tribal teachers Ashram Schools restricts the students in mingling with other students as most of the schools accommodate only students from same tribe, the socialisation of students is been limited. They anticipate that this might affect the students' confidence and isolate them in other institutions when they join for higher studies where they have to learn with the other students. In Government Ashram schools, every teacher is qualified as per the norms and follow the guideline of RTE. But none of the teachers have received any training regarding the Ashram School Scheme or about tribal culture or practices. And so the nontribal teachers take time to understand the students and their capabilities. But in one or two years teachers get transferred to other schools and again a new teacher comes. This is where the question of inclusion is relevant in terms of educating tribal children.

Ashram schools and Right to Education Act, 2009 have made special efforts for bringing the students to school. The Act have made special provision about bringing schools in walking distance of 2km in unreached remote areas and also giving transportation facility to take students to schools were setting of schools are not possible but from students it was evident that there are still out of school children in their community who have either dropped out from schools or not been enrolled in any schools.

Conclusion and Suggestion

Educating the tribal is a major challenge for the Government. At present, the environment is fertile with the introduction of RTE Act, 2009 in the country and that could bring positive impact to tribal education and could guarantee quality services once followed.

The present study aims at understanding the functioning of Ashram school in the State of Kerala. The Study looks into the opportunities, services, facilities and educational assistance provided to the tribal children. The Ashram School Scheme and the Right to Education Act 2009 have been used, to look at the quality of services provided in the school.

When the Ashram School Scheme is reviewed it is evident that the quantity is always measured and prioritised rather than the quality. As far as the Ashram Schools in Kerala are concerned it is the need of the hour to look into the quality aspects which will improve the tribal education in the State. The quality of the facilities and accessibility of the students and teachers needs are not been tackled. Child centred approach, and language learning classes, context specific teaching aids, and community-based curriculum are not been considered important. As long as poor socio economic condition persists among the tribal population, they will continue to send students to Ashram schools. As poverty is intertwined with the education most of the economic needs are being catered more than the educational needs of the students.

All Government schools have a Superintendent who is in charge of the administration of school and Headmistress who looks after the academic functioning of school. It is found that in most of the schools, Superintendent and Headmistress have difference in opinion which hinders the effective functioning of the schools. As the schools have temporary teachers who are been appointed under the Department of Tribal Development, it is mostly their duty to take extra classes and are in charge of hostel and mess. The other permanent teachers who are appointed under the Education Department do not take such responsibilities other than regular teaching.

Major problem faced by the Government school is the challenge to reduce the drop-out rate which is a constant pressure on them from the authorities. Even though schools can reduce the drop out by increasing the quality of services and providing better facilities sometimes there are certain cultural factors. These cultural factors which lead to students drop out could not be tackled by the school. As far as school is not providing any out reach activities in the community it is difficult for the school to completely reduce the drop out. So it is necessary for school to work outside the school to increase enrolment and reduce drop outs.

In certain schools the student strength is more than the stipulated strength. The School Management do not have the freedom to deny admission to any

student and therefore the Schools are sometimes forced to take more students. And the increase in student intake will result in sharing of resources and

Most of the parents have realised that the education is needed for their students but most of them cannot afford for sending students for higher studies. They are also unaware that in what way education is helpful for their children as after schooling they go back to the same situation of poverty and deprivation. So it is necessary that the school should equip students in any vocational or skill development that will be useful in creating opportunities for employment/self-employment after going back to the family.

There are no programs or systems to monitor what happen to a student who goes out of an Ashram school. It is necessary to support the student regarding their educational or employment needs after high school as many of their families are not equipped for that. During their stay in the School, arrangements can be made for aptitude testing, exposure to various vocational training facilities, equipping the students for selecting the right kind of vocational course, and providing information on schemes for the ST students for higher education.

As the tribal population are in different stage of development it is necessary for the school to understand the tribal community. This might help the teachers to understand the students' learning capability which in turn will be useful in developing teaching learning equipment as well in classroom teaching practices. The Ashram Schools should work to improve the quality of residential care and educational facilities and the Scheme should also make provisions for the quality enhancement.

One of the major challenges faced by the management is the irregular funding which affects the quality of facilities provided. Major problem faced by the Government school is the challenge to reduce the dropout rate which is a constant pressure on them from the authorities. Even though schools can reduce the drop out by increasing the quality of services and providing better facilities sometimes there are certain cultural factors. These cultural factors which lead to students drop out could not be tackled by the school. As far as school is not providing anyout reach activities in the community it is difficult for the school to completely reduce the drop out. So it is necessary for school to work outside the school to increase enrolment and reduce drop outs.

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CHAPTER 4

Tribal Trafficking in India: A Case Study of the State of Jharkhand

Life with dignity is very basic fundamental rights of every human being. Trafficking of persons is one of the nastiest form of human rights violation of human being. Cross border trafficking is the third most profitable business of the world and no country in the world can claim to be free from this evil of the society. Since beginning, the term *"trafficking"* has not been defined specifically but with the emergence of the Palermo Convention 2000 an endeavor has been made to bring the concept into a strait jacket. The concept of trafficking in people refers to the criminal practice of exploitation of human beings, when they are considered as commodities for profit and after being trafficked, are subjected to long-term exploitation. The United Nation Convention against Transnational Organized Crime (UNTOC) and its protocols adopted in 2000 were an International effort to focus on the issue of Human Trafficking, considering it an organized crime. United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons defines human trafficking in Article 3(a) (Palermo Protocol)

> *"Trafficking in Persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation"*[1]

[1]Nandita Sharma, "Anti Trafficking Rhetoric and the Making of a Global Apartheid" Vol. 17 *NWSA* Journal, 90 (2005).

Act	Means	Purpose
Recruitment, Transport, Transfer, Harboring, Receipt of persons	Threat or use of force, Coercion, Abduction, Fraud, Deception, Abuse of power or vulnerability, Giving payment or benefits	Exploitation includes: Prostitution of others, Sexual exploitation, Forced labour, Slavery or similar practices, Removal of organs, Other types of exploitation

Source: UNODC (Available at https://www.unodc.org).

The history of human trafficking can be sketched back to the time of Greek City States. The Greek state and following it others trafficked girls and women mainly for the purpose of prostitution[2]. The term "traffic" was first used to refer to the so called "*white slave trade"* in women and the first known phase of trafficking occurred during the Middle Ages, when each year thousands of women and children from East Prussia ,the Czech lands, Poland, Lithuania, Estonia and Latvia were sold in the slave markets of Italy and southern France[3].

As far as India is concerned, this country is a source and destination of trafficking and the victims becomes the down trodden people like STs, SCs, OBC etc., they become easy prey of the trafficking networks/touts. India has the second largest tribal absorption in the world spread across several parts of the country mainly in forests and hilly regions. The characteristics of these communities are their particular geographical location, distinct culture, economic backwardness and aloofness from the society. According to the Census of 2011 the schedule Tribe population is 10.42 million which is 8.6 % of the total population of India Madhya Pradesh, Maharashtra, Orissa, Gujarat, Rajasthan, Jharkhand, Chhattisgarh, Andhra Pradesh, West Bengal, and Karnataka are the states having a large number of ST populations. The overall areas inhabited by the tribal population constitute a significant part of the underdeveloped areas of the country. About 93 per cent of them live in rural areas and are engaged in agriculture and allied activities. Tribal people were in fact self-governing first nations. These subjugated tribal groups were forced by the people belonging to upper castes to perform menial jobs like small household works, sweeping,

[2]Government of India, *Resource Book on the Legal Framework on Anti Human Trafficking* https://www.unodc.org/documents/humantrafficking/India_Training_material/Resource Book_on_Leg al_Framework.pdf (last accessed on 12.03.2018).

[3]AnamariaMarconVenson,Joana Maria Pedr," Human trafficking: a historical approach to the concept" *Tráfico de pessoas: umahistória do conceito, RevistaBrasileira de História*. São Paulo, v. 33, 59 & 81(2013).

cleaning of excreta, leather works, removal of dead bodies etc. The tribal people were considered untouchables and they were not even allowed to sit along with the people of upper caste. Their sovereign existence outside the mainstream led to the preservation of their socio-religious and cultural practices as there was no interference by the mainstream society.[4]The Scheduled tribes, since centuries, have been victims of socioeconomic exploitation and have been downgraded to low income generating occupations, inferior trades, unhealthy environment and unclean unskilled occupations. The Constitution of India seeks to secure for all its citizens, social and economic justice, equality of status and opportunity and assures the dignity of the individual. The Constitution further provides social, economic and political guarantees to the disadvantaged sections of people. Some provisions are specific to both Scheduled Castes and Scheduled Tribes and some are specific to only Scheduled Tribes.[5]

Trafficking of women and minor girls continues to be widespread in Jharkhand and has today emerged as a major source area for inter-State trafficking in India. Most of the trafficking from Jharkhand is from tribal communities for domestic labor to metropolitan cities where there is a demand for such work. In cities like Delhi, a number of illegal placement agencies have cropped up. These agencies take advantage of legal loopholes to traffic mostly innocent women and girls in the name of providing employment, but instead are put into either cheap labor or extreme conditions of Bonded Labor and forced labor, where 12-14 hours of work every day is a routine practice for these women and girls. Apart from that, there is physical and sexual abuse. Numerous cases of Sexual slavery have also been reported from the victims rescued in Delhi. Some of the victims are trafficked to Haryana and Punjab for the purpose of forced marriage.

Jharkhand is a state with a large tribal population. While the national average of Scheduled Tribes is 10.4% of the total population, the tribal population of Jharkhand accounts for 26.21 per cent of its total population. According to the Society for Regional Research and Analysis (2010), about 91.7% of this population is based in rural and forest area. In some districts like Khunti (73.3%), Simdega (70.8%), Gumla (68.9%), West Singhbhum (67.3%), Lohardaga (56.9%) the population of tribals is more than 50% of the total population. Districts that have 25% to 50% of tribal population are Latehar (45.5%), Dumka (43.2%), Pakur (43.1%), Ranchi (35.8%), Debagarh (35.3%), Saraikela-Kharsawan (35.2%), East Singhbhum (28.5%), Sahibganj (26.8%)[6] Some of

[4]Gaurav Redhal And UpasanaDahiy, Rights Of Tribals in India With Respect To Access To Justice, International Journal of Socio-Legal Anal ysis And Rural Development Volume 2 Issue I.

[5]Available on http://shodhganga.inflibnet.ac.in/bitstream/10603/25489/9/09_chapter_01.pdf (Last accessed on 6.6.18 at 4.10.pm).

[6]Statistical Profile of Scheduled Tribes in India, 2013.

these districts are also the ones that record high incidences of trafficking. There are thirty different tribal groups, representing Negrito, Proto-Australoid, Mongoloid, Mediterranean and Nordic races. The Hos, Santhals, Oraons and Mundas together constitute almost four-fifths of the total tribal population of the state[7]. These tribes are mainly agriculturist-cum-gatherers The Society for Regional Research and Analysis (2010) found that education in the interior tribal areas is still a major problem in spite of the ongoing national mission programme of Sarva Siksha Abhiyan. More than 60% of the surveyed families in Jharkhand state were found to be illiterate. According to the Census of India (2011), the literacy rate in Jharkhand for tribal males is 68.2% and that for tribal females is 46.2%, which is significantly lower than the national averages. According to UNODC's (2013) India Country Assessment Report: Current Status of Victim Service Providers and Criminal Justice Actors on Anti Human Trafficking, red light areas exist in the districts of Dhanbad, Bokaro and Hazaribag. The trafficking affected districts include Garwah, Sahibganj, Dumka, Pakur, West Singhbhum (Chaibasa), Ranchi, Palamu, Hazaribag, Dhanbad, Bokara, Girdih, Kodarma and Lohardaga. Most of the women trafficked from Jharkhand belong to Oraon, Munda, Santhal (including endangered Pahariya) and Gond tribes, out of which, maximum are from Oraon and Munda.[8]

Major Causes leading to trafficking in India

Poverty

Numerous studies and repots have revealed that poverty is one of the very noteworthy cause of trafficking of tribal population. Tribal Woman and child become easy prey in the hand of touts or trafficking network because of poverty. As Jharkhand is one of the very poor state of India. The poverty alleviation programs and schemes have performed very poorly. Landless tribal, seasonal farming, lack of sustainable employment and livelihoods, very poor irrigation facility has contributed immense poverty among the tribal population making them very vulnerable. Hence, this deplorable conditions compel them particularly to women and girls for unsafe migration which ultimately becomes trafficking.

Poor Education

The survey report of 2011 reveals that literacy rates have increased to 53% but it is still below the national average of 74.4% and the gender gap has narrowed but still prevailing the male literacy at 60.34% and female 39.53%, literacy rates among STs are very poor and in which female literacy is very poor. The target of education of to all is still a distant dream and the quality of

[7]Jharkhand Tribal Development Programme, 2008.

[8]Situational Report on Human Trafficking in Jharkhand, available on Email: shaktivahini@ yahoo.co.in Web:www.shaktivahini.org.

education being imparted in schools need to be improved on a high priority basis. The availability of secondary, higher and technical education in various districts of Jharkhand and particularly tribal dominated districts are still a major deficiency and no stern step has been taken so far. Therefore, due to poor education they are ready for unsafe migration and ultimately become easy prey of touts/ trafficking networks.

Unemployment

Unemployment in India and in particular Jharkhand is very high. As in Jharkhand, a significant number of tribal population is inhabitant since very long time and eventually effected by this problem. Very poor education among tribal has compelled them to be unemployed. A majority of the population is based on in rural and forest area, are mainly dependent on agriculture and forest. They earn their livelihoods or wages as agriculture laborers, forest and seasonal laborers. In majority of the regions of Jharkhand, the agriculture is dependent on rain. Hence, there are high number of seasonal farmers and laborers. After the cultivation period, they become unemployed, which makes them an easy and ready target for touts/ trafficking networks to be trafficked. Lack of agricultural operations in a full-fledged manner is also leaving the landless labor high and cry. The only choice available to them is to go for unsafe migration, which finally comes into the heinous shape of trafficking. Deforestation, mines excavation and related settlements and need-based arrangements affected the land the tribal people adversely. The people of that region became alienated from their land and society, for mining and industrialization in the name of national interest.

Environment

Ecological migrants are people who have been displaced because of environmental factors. Their normal means of livelihood is disrupted and they are unable to find subsistence from the land. It is usually the destitute and the indigenous people who are most affected. People move because of elemental disruptions, like cyclones or other natural disasters. The destabilization and displacement of populations increase their vulnerability to exploitation and abuse through trafficking and forced labor. The tribal people of the state of Jharkhand has faced numerous times displacement due to environmental reasons.

Adoption

Trafficking for adoption is another threatening game of the traffickers. In this connection, the complication and magnitude of this growing problem require elaboration. The need for giving up children for adoption arises in situations where the biological parents or near relatives are not able to look after the child or when the child is abandoned, with no trace of the parents. There are significant number of incidence has taken place in Jharkhand where in the

name of adoption the child has been trafficked. Hence, adoption is playing a very prominent role in accelerating trafficking in this state.

Organ transplant

The advancement in the field of medical science has given rise to the possibility of life saving technology of organ transplantation. However, the high amount of expense involved in this technology has made this very exploitative. Moreover, the involvement of organized crime has given the issue of trafficking a crucial dimension.[9] Many a time traffickers lure poor people including children, to donate their organs by offering big sums of money. The donors, who are mostly poor people, are categorized by their blood groups and thereafter, lawyers file false affidavits on behalf of the donors as well as the recipients. Most countries require living donors to be family members or allow organs to be removed from cadavers, usually accident victims. As far the state of Jharkhand is concerned, in last few years the incidents of organ transplant has come into light and which has now become a very severe specially in tribal prone areas of this state.

Trafficking for marriage

Trafficking for the purpose of marriage is also one of the vital factors leading to trafficking in several countries. As far as India is concerned, marriage for trafficking is not a new issue. The falling sex ratio in various parts of India like Haryana, Rajasthan and other states has given rise to a typical problem of trafficking of women for marriage. Foreigners intending to marry young girls, engage middlemen to locate suitable brides. Hyderabad has become a frequent destination of many of these persons. Agents of the Arab nationals scout the city for pretty girls from vulnerable families. The trafficking prone region like Jharkhand, Bihar, etc. has become a fertile land for traffickers. After the marriage takes place, the girl is made to leave her house without giving the parents time to check the antecedents of the groom and the credibility of the agents.

Debt bondage

There are instances where, in return for money advance or credit, a person has pledged his labor or that of a child for an undefined period of time. Children, thus, become commodities in the process. Parents pledge them like chattels to pay off their debts. The initial loan for bondage can be quite small. However, the borrowing family is illiterate and not able to understand the interest calculations of the loan-givers. The very poor tribal easily comes under the trap of such type of person and are exploited for a very long time.

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[9]HRLN, Trafficking and the Law, Socio legal Information Centre, 8 (2006).

Legal Framework to address trafficking in India

The apex book of the land i.e. Constitution of India, prohibits trafficking in persons. *Article 23*of the Constitution specifically prohibits traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. *Article 24*further prohibits employment of children below 14 years of age in factories, mines or other hazardous employment. Other fundamental rights enshrined in the Constitution relevant to trafficking are *article 14*relating to equality before law, *Article 15*that deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth or any of them. *Article 21*pertaining to protection of life and personal liberty and *article 22*concerning protection from arrest and detention except under certain conditions. The Directive Principles of State Policy articulated in the Constitution are also significant in this regard.

The Immoral Traffic (Prevention) Act, 1986

It is the solitary Act dealing specifically with the issue. There has been a mind-boggling surge in cases of trafficking under the Immoral Trafficking Act (ITPA) in India, it is a munificent and victim friendly legislation and its purpose is not only to punish the accused, but to prevent re- trafficking, it also oversees there habilitation of victims.[10]However, it does mix up issues of trafficking and prostitution and is currently pending amendment. It penalizes trafficking of women and children for commercial sexual exploitation. Keeping a brothel is a punishable offence, as is living on the earnings of the prostitution of others. The latter would inadvertently also cover family members or dependents of the woman, which was not the intention of the legislation. There have been cases at times where the trafficked woman has herself been charged under this provision[11]. This Act consists of number of loopholes in itself, which needs to be amended very soon. The Anti-Trafficking Bill of 2016 is only the latest (proposed) addition to the existing patchwork of Indian laws against trafficking. The anti-trafficking Bill envisages creating district and state-level anti-trafficking committees with government officers and NGO representatives to mobilize efforts to prevent, rescue, protect and rehabilitate victims of trafficking, in addition to providing medical care, psychological assistance and skills development.[12]

[10]Swati A. Chauhan , ―Immoral Traffic(Prevention) Act,1956: A Concise Review in Veeredra Mishra (ed.), *Human Trafficking: The Stake Holders' Perspectve*. Sage Publication 252(2013).

[11]Gaurav Hooda1 & Gauri Shrikhande, A CRITICAL ANALYSIS OF LAWS AGAINST HUMAN TRAFFICKING IN INDIA, South -Asian Journal of Multidisciplinary Studies (SAJMS) ISSN:2349-7858:SJIF:2.246:Volume 4 Issue 4, page, 23.

[12]35 http://wcd.nic.in/sites/default/files/Draft%20T rafficking%20of%20 persons%20 Bill %202016.pdf accessed on 25th June 2018.

Indian Penal Code, 1860

As far as the IPC is concerned, there are certain provisions with regard to trafficking related issues but the Criminal Law Amendment of 2013 provided a specific definition to trafficking. As in the year 2013, India enacted groundbreaking legislation, the Criminal Law (Amendment) Act of 2013 (hereinafter 4 referred to as the Amendment Act), which amended various sections of the Indian Penal Code, including provisions on human trafficking, Section 370 has altogether been changed and a comprehensive definition has been given. A new section 370A has been inserted which is the species of section 370 of the IPC. Apart from that, there are approximately twenty sections in IPC, which deals the issue related to trafficking.

NCRB Report

According to the latest National Crime Report Bureau of2016, which was released on October 2017, where in Jharkhand, a total 109 case related to human trafficking has been registered so far, and 63 were charge sheeted. However, in the year 2015, 172 cases were reported. So far the rescued victim is concerned, 45 victims have been rescued out of which 20 victims were for forced labor, 18 for domestic servitude, 3 for forced marriage, 2 for sexual exploitation for prostitution and 2 for petty crimes. As far as the disposal of persons arrested under human trafficking is concerned, 83 persons were arrested out of that 75 were charge sheeted but not even a single person were convicted. The above mentioned report is revealing the pathetic condition in the state of Jharkhand with regard to trafficking. Although this report does not specifically identifies the cases related to tribal. Therefore, it may be said that no far-reaching changes have taken place so far for curbing this menace.

CASE STUDY 1

The researcher met with one Aasu (name changed) aged about 12 year old, the rescued survivor of forced labour on 15th July 2015 at Tundi, which is a rural area of district Dhanbad. He narrated me the whole story of trafficking which he faced. He said,

"I was doing a job in mechanical shop four kilo meters from my home. One day one person named Lal Babu came to meet me andsaid that your two friends Pintu and Saleem are ready to go to Jalandher for good jobin a factory. You will get 10,000/ rupee per month. Apart from that, you will also get free fooding and lodging. If you are interested then inform me within two days. Heasked me inform him on phone and gave me a number. I talked with my parents. They said if you think that is better then you can go. But you should inquire first. I replied that two of my friends are also going with me so, there will be no problem. Finally, informed him and us all three reached Jalandhar.

Lal Babu arranged for us a verysmall room without electricity. When we asked that this room is very small, he replied that this arrangement is for few days. You will get a well decorated room soon. Butthe next day we reached a place where a big building was about to be constructed. Heasked us for doing the work pertaining to construction. We denied doing the same but Lal Babu said that in factory there is no vacancy, you will get the job after one month. Lal Babu said if you will not do this job for few days then how you will eat? Hence, ultimately we joined that temporary job. As I was not having mobile, so I was not intouch with my family. We understood that Lal Babu has deceived us but we had no option. Lal Babu had arranged some utensils for cooking food for us. After ten days one morning we sold all utensils in shop and the same night we ran away and reached Jalandhar railway station. Finally we reached Dhanbad."

The above narration highlights the pathetic condition of trafficked persons who have been deceived by the mediator and did not get what they were promised, rather landing the min pitiable working conditions and financial exploitation.

CASE STUDY 2

Nitu (name changed), was a fourteen year girl of Haws village of Khunti. She narrated her story,

"my father solemnised my marriage with Nummu of adjacent village. After almost ten days of the marriage, I came to Ranchi with him. He said tome that he will join a good job here. Nummu took a lodge for stay near Ranchi junction. After two days in Ranchi my husband said to me that I did not get a good jobhere so we will go to Delhi for better opportunity. We reached Delhi and stayed in a filthy room in a place. I do not know the name of the place. My husband asked me to join the job of house cleaner in a home. I objected but he said that it is a big city and expenses are high. Hence, we both will have to work. I started working in a building in Shakti Nagar Delhi after two days of this job when one evening I came to the room I found that no luggage is there. I narrated the story to my malkin she said to me that your husband had come and had taken four thousand rupees by saying that you will remain house cleaner here until he comes back. Once malkin's son physically harassed me. Since two months of this incident my husband did not come. I came to my village after two months. Now I sew clothes of woman and am self-dependent."

The narration by woman trafficked victim highlights the problem of fake marriage and consequent exploitation of women by the so-called husband and employers.

Conclusion and Suggestions

To sum up, it may comfortably be said that trafficking in human beings and in particular of tribal is a horrifying reality that stares in the face of the civilized global community. It is one of the worst forms of exploitation of vulnerable humans. Human trafficking is the illegal trade in human beings for the purposes of commercial sexual exploitation, forced labor, organ trade, child begging and child soldiering etc. In the present scenario "human trafficking", is the "new slave trade." It is an exploitation of victim's vulnerability. As far as the State of Jharkhand is concerned, the State Advisory Committee of the Government of Jharkhand on trafficking has not been found to be functioning. The government of Jharkhand has formulated a state action plan to combat human trafficking but this also has not been implemented so far. The Jharkhand Police have set up 25 Juvenile Police Unit in all districts of the state. Sixteen "Protection homes" under Integrated Child Protection Scheme have been designed, in spite of receiving a grant under the state of Jharkhand, has not set up any of the Child Protection Units at the district level. Twenty four Child Welfare Committees (CWCs) have been established but they continue to work without any infrastructure. The government has not initiated standard minimum care and protection for victims. Jharkhand is troubled by naxalism also, which is retarding development leading to increased rate of poverty and unemployment thus, facilitating trafficking.

There are following few suggestions for effective prevention, prosecution, repatriation and rehabilitation pertaining to trafficking in tribal women and children in the state of Jharkhand.

- There must be mandatory provision for the registration of marriage which maycurtail the chance of fake marriage as it has now become one of the mostimportant factors of trafficking in Jharkhand and specifically in tribal populated areas.
- There is urgent need to regulate placement agencies by enactment of law in Jharkhand. The reason is that many women and children and specifically tribes are trafficked through placement agencies. There should be adequate provision for mandatory registration and periodic inspection of the activities of such agencies who claim to provide job. At present these so called placement agencies are taking full advantage of legal lacunae.
- There should be a compulsory one chapter in middle as well as high schoolssyllabus of social science in Jharkhand regarding the menace of trafficking. The students should be informed the ways and means toprotect themselves and others from the trap of traffickers.
- On every week there should be compulsory camps by the NGOs as well asgovernment organization working against trafficking in trafficking prone

villages to spread awareness regarding identification of traffickers and protection againsttrafficking.

- The anti-trafficking police unit must be established in each block head quarter to monitor the movement of touts and traffickers through police informant's and thereby protect the vulnerable tribal sections through swift action.
- There should be harmonization between different departments for all-inclusive rehabilitation as rescue is only the first step towards rehabilitation, which is a much longer process. Various government departments like Women and Child-development, Social Welfare, Labour, Education, Health etc. need to work together to chalk out comprehensive plans for rehabilitations and then work together to ensure the proper implementation of the plans.
- One of the aspect of rehabilitation that needs to be tackled is the paucity of Shelter Homes in Jharkhand because the magnitude of trafficking is high due to poverty, illiteracy and unemployment.
- There is a grave need to strengthen child protection mechanism in this state which includes proper coordination between family, mohalla/village committees and police.
- There must be regular monitoring not only on big railway stations but also in small railway stations and bus stands by the anti-trafficking police unit in tribal areas.
- There must be compulsory free legal aid programme at least fortnightly in a month in all blocks and panchayats of tribal dominated areas of Jharkhand to spread awareness regarding all phases of the trafficking.
- Local religious leaders and religious centers head like Purohit of temple, father of a church should be motivated to propagate awareness of social evils like trafficking etc. They should also involve young, educated, legally aware and socially committed men and women to speak regularly to believers who assemble for daily/weekly prayers. Any guidance coming from palace of worship shall have profound impact on their respective believers.

The rescued women and children should be connected to various programmes like Pradhan Mantri Kaushal Vikas Ypjna launched by Ministry of Skill Development And Entrepreneurship. It is the flagship scheme of the ministry of Skill Development & Entrepreneurship . The objective of this Skill Certification is to enable a large number of Indian Youth to take up industry relevants kill training that will help them in securing a better livelihood. Such attaining will mitigate or minimize many of the causal factors responsible for possible re trafficking of rescued women and children who might become jobless after the rescue operation is over. The researcher found out that most of the time the

rescued women and children are handed over to their family member's residing in remote villages. The families are too poor to support the rescued persons and if immediately some kind of job or profitable engagement is not provided then there is high probability of re trafficking because the agents/ touts / middlemen are always on the lookout for needy persons who can be trafficked.

CHAPTER 5

Maternal and Child Healthcare Services Utilization: Right for Equal Health among Tribal in India

Abstract

Health is major key component for any nation to develop itself. That means if individual will be healthy; he or she would be able to participate actively in day-to-day life and so towards the development of nation by contributing in economic growth. Apart from this being healthy and accessing health services is also fundamental human right. It would be not wrong to say that maternal health is like spine for being healthy as it is the initial level to start healthy life for mother and the child. In India, improving maternal health is one of the major concerns by the government. Many programmes and schemes have been launched by the government at over the period to improve the same but huge diversity in terms of caste and ethnicity including others.

Among the tribal, geographical proximity have remained few challenges in the path of availing and accessing these programmes as well as maternal and child health services. One of the important examples of such diversity is tribal areas which are lagging behind in terms of health due to their inhabitant in difficult geographical conditions. Availability and accessibility of MCH care services is major challenge in these areas. There are more than 700 scheduled tribes in India with the total population of 83.3 million which is 8.2 percent of the total Indian population (GoI, 2011). Hence, it is necessary to evaluate the MCH care facilities provided in the area for such a large population which remained ignorant for a long time.

The present study is based on secondary sources, basically a review of literature based on tribal health and accessibility and availability of MCH care services in the various tribal areas. This study will throw light on the

actual scenario of availability of health services in the tribal regions of India.

Keywords: Tribal Health, MCH Care, Availability, Accessibility, Utilisation.

Introduction

Health is not only an important requirement for the development of an individual but it is also a basic right to live healthy. The World Health Organisation (WHO, 1946) defines health as "state of complete physical, mental, and social well being, and not merely the absence of disease or infirmity[1]." Over the period, definition and dimensions of health has modified but still equal access healthcare services to achieve equal health status has remained an integral component of health & healthcare across the world. In this context the director-general of World Health Organisation (WHO) Dr. Ghebreyesus (2017) states, "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, and political belief, economic or social condition". It means that everyone should have access to the basic health services at the time and place of need; they are entitled to control their health and body as well as it is their basic right to get the treatment with respect and dignity[2].

Health may have various dimensions in terms of physical and mental health or many more. Maternal health is also considered as those specific components of physical and mental health pertaining to specific reproductive age of human being. With this regard, it can be understood that it is right of men and women to get informed about accessing safe and proper access to health care facilities. It makes women enable to experience safe pregnancy and childbirth for a healthy infant. The term 'maternal health' is a part of reproductive health pertaining reproductive age group women of age 15-45/15-49 years who exercise the services for safe and healthy childbearing life. According to World Health Organisation, Maternal health includes physical, mental and social well-being of women during pregnancy and delivery. However, maternal healthcare covers all the healthcare services assumed to access and utilized by the reproductive age women for healthy and safe mother & child health.

In the development context, MCH care has remained an essential part of the Family Welfare Programme in India since the time of Independence. In 1996, safe motherhood and child health services were also included into the Reproductive and Child Health Programme (RCH) and in 2005 it has become the part of National Rural Health Mission (NRHM). Government of India has

[1]http://www.who.int/about/mission/en/ (Accessed on July 11, 2018).

[2]http://www.who.int/mediacentre/news/statements/fundamental-human-right/en/ (Accessed on July 11, 2018).

initiated National Rural Health mission to focus on providing health care to everyone with extra attention to women and children and to those who are disadvantaged and cannot access health care (GoI, 2005, 2011).

The present study is an exploration of MCH services utilisation in various Tribal areas all over India. This study is an outcome of reviewing literatures on tribal health, their beliefs, accessibility and availability of health services utilisation, their status on maternal and child health care as well as its utilisation. This paper progressed with the factors that are associated with MCH and reason behind the poor status in MCH care in India. The final part of this study is throwing light on the status of MCH services utilisation and major factors influencing it with the concluding remarks.

Maternal and Child Healthcare- Issues and Concern

Women's health always got less attention which results into health related complications and sometimes even the death of child and mothers. Reports reveal that in every minute, a woman dies of complications related to pregnancy and childbirth in some or the other part of the world and among them, near about 99 percent women belongs to developing countries[3]. United Nations Population Fund (UNFPA) also shows similar facts that every day around 830 adolescent girls die due to preventable maternal causes[4]. Hence, it can be said that pregnancy-related complications are one of the leading causes of death for women (of the reproductive age i.e. 15-49) in India. In other words, maternal mortality can be prevented by providing easy access to appropriate health care during pregnancy, childbirth and immediately afterwards. Safe motherhood means ensuring that all women receive the care they need to be safe and healthy throughout their pregnancy. Antenatal care, safe child birth and postnatal care are integral part of safe motherhood. To achieve the safe motherhood, indeed India has started paying attention towards women's health.

Every woman has the right to enjoy safe and healthy maternal life, which is a basis for having healthy children, intimate relationships and happy families. Achieving universal access to maternal health services and to reduce maternal mortality by 2015 was one of the Millennium Development Goals (MDGs) and now it's under Sustainable Development Goals (SDGs) across the world. Moreover, the International Conference on Population Development (ICPD) Program of Action came up with new strategy for meeting the needs of men and women individually rather than emphasising on demographic development altogether. It has came up with the four goals focusing on international community, among which two goals were particularly relevant for the maternal Health.

[3]http://www.safemotherhood.org/ (Accessed on January 15, 2018)

[4]https://www.unfpa.org/data/transformative-results#end-maternal (Accessed on January 15, 2018)

These two Goals include the reduction of maternal mortality and secondly, better access to MCH care services in terms of Primary Health Care.

Concern about maternal and child health in India is very old. The first health survey and development committee, way back in 1943, recommended that reduction of sickness and mortality among women and children should be amongst the highest priority issues in any programme of health development. Similar concerns were raised by the Health Survey and Planning Committee in 1961. Subsequently, child health issue in continuation with maternal health has been recognized as priority development issues reflected through different five years development plans as well as within the country's health policies. In fact, the rationale behind the introduction of family planning in India was the poor health status of women and children and not the rapid population growth at the beginning.

Maternal and Child Healthcare- Evidences of Unequal Access and Utilization

There are various aspects of women's health and one of them is reproductive health during 15-49 years is influenced by the socio-economic and cultural circumstances. According to the World Bank, the reasons behind high maternal and child mortality are the lack of appropriate care during pregnancy and at the time of childbirth, inadequate services for identifying and managing complications. However, the report of World Bank also shows the decline of 44 percent maternal deaths from the year of 1990 to 2015[5]. Access to and use of quality health care services is directly related to decline maternal mortality (Fauveau et al., 1991; Bhatia and Cleland, 1995). The proper Antenatal checkups are responsible to establishing good health before childbirth and the early post natal period and resulted in saving the lives of mothers and babies (Jejeebhoy, 1997; IIPS, 2007). Utilization of maternal health services depends upon their availability. There are more factors contributing towards it such as socio-economic, demographic, cultural factors like religion, caste, education, employment, women's age, and autonomy etc. (Obermeyer, 1993; Bhatia and Cleland, 1995; Addai, 2000, Basu, 1990; Sundari, 1999). Several empirical studies have examined the impact of these factors on the utilization of health services. Based on the findings of several studies, the linkages between background characteristics of the women and the utilization of various components of maternal health service have been brought up in the following sections.

[5]http://www.worldbank.org/en/topic/reproductivematernalchildhealth (Accessed on 11 July, 2018)

Linkages of Socio-Economic Factors and Maternal Healthcare

Although pregnancy is recognized as a biological process, but its socio-economic dimensions are equally important. The whole process of childbearing is governed by social, cultural and economic factors (Mondol, 2003). Socio-economic factors are more inclining factor towards influencing utilization of the maternal health-services when compared to the demographic factor (Obermeyer and Potter, 1991). Although, one cannot ignore the demographic factors as they may shape a woman's desire to utilise the services. A young woman may have more willing towards utilization of the obstetric health care. (Stephenson and Tsui, 2002).

In orthodox and traditional social systems, an individual's demand for (maternal) health services is influenced by her cultural and socio-economic environment. Religion affects the use of professional maternal services through cultural practices and rituals (Wall, 1998). To some extent, tradition, religion and culture plays an important role for not using the available MCH care services in many developing countries (Paul & Rumsey, 2002). Paul (2000) further, observed that the majority of population in Bangladesh believes childbirth as an act of God and hence they do not utilise the health services for such 'natural event'. Therefore, they are fond of taking help of Traditional Birth attendants' (TBAs) for child birth instead of visiting hospitals. Unavailability of female doctors is also contributing towards this behaviour as in Muslim countries do not usually converse with unknown persons, particularly males (Paul and Rumsey, 2002). This situation acts as an important social and religious barrier to the use of health centres for delivery purposes. According to Pallikadavath *et al.* (2004) observes that among all the religious groups, Muslims in the state of Madhya Pradesh are most likely to access antenatal care through visits to a health facility while Muslims in the other states such as Bihar, Uttar Pradesh and Rajasthan had the lowest visits.

Household standard of living is a proxy variable for household income. Usually families belonging to a higher economic class are more aware about their health and so to access the existing health resources (Feldman, 1983). In a study of maternal health care utilization in Jordan, Obermeyer and Potter (1991) shows that a high standard of living is positively associated with intensity of utilization of prenatal care. Similarly, Mondal (1997) in the study of utilization of ante-natal care services in Rajasthan observed that women's standard of living index is positively associated with service utilization. Pallikadavath et al. (2004) in their study in four states in India found that association of higher standard of living with greater likelihood of receiving antenatal check-ups is because health workers prefer to visit households with a higher standard of living and they are more reluctant to visit the homes of poor women in some settings.

Along socio-economic factors, maternal education is considered as one of the strongest factors associated with receiving maternal health service use (Basu, 1990; Mitra et al., 1997 and Prince, 1999). Previous studies show that the determinant of health service use found most consistently is a woman's educational accomplishment (Obermeyer, 1993; Bhatia and Cleland, 1995; Addai, 1998; Nuwaha, 1999; Magadi et al., 2000). A study conducted by Okonofua et al. (1992) found that the strongest socio-economic determinant of maternal mortality is the level of education. Educated mothers are more likely to aware about their health problems, approach to medical care, and report a problem. Studies have found that delivery care from trained health professionals leads to reduce infant and child mortality rates.

Other than this the geographical proximity and the place of residence is likely to affect access of services during pregnancy, delivery and post-delivery due to various reasons, for example, environment, resources and etc. According to Islam et al. (2006) majority of deliveries take place at a woman's or parent's home and are closely assisted by untrained TBAs or by relatives or by others because most of the homes in rural areas are quite far from the health centres or with inadequate facilities. Even in the extreme emergency cases such as prolonged obstructed labour rural women are not allowed to leave home. Due to the restriction on women's mobility in rural areas adolescent women are not able to utilize services (Mensch et al., 1998).

Maternal and Child Healthcare- Service Utilisation among Tribal

There are more than 700 scheduled tribes living across India with a population of 83.3 million which is 8.2 per cent of the total Indian population. It has grown annually by 2.1 per cent and has become 8.6 per cent of the total population in 2011 (Census of India, 2011). Constituting such a large proportion of the population, it is necessary to ensure better quality of health facilities for their physical and mental development. The tribal communities are most disadvantaged groups in terms of their socio-economic status. Hence, their health status is also very poor. The infant and maternal mortality rate is greater among them than the non-tribal population.

The heterogeneity among tribal population and their socio-economic status make them disadvantageous group when compared to non-tribal population. One of the ubiquitous challenges in India for indigenous people is inadequate access to and utilization of quality health care services. Many of the tribal communities still live in remote rural areas where they are unable to access the ambulatory, acute and specialized health care services. Even though, the health status of tribes have been improved since last few decades but still health disparities can be seen within tribal population. The major factors contributing towards those health disparities are remote location, uneven geographical

conditions, communication barriers, unavailability of health facilities and last but not the least, poor socio-economic development.

The National Family Health Survey (NFHS-4: 2015-16) exposed that the status of tribal women is worse on all the social and health indicators. Studies have been revealed that tribal women are the most unprivileged and disadvantaged group in terms of their health status, where majority of them are suffering from malnutrition, infections, early and repeated pregnancies (Meena, 2014; Basu 1990; Reddy, 2008). Although, Government has launched and implemented various schemes for developing their health status, but the tribal have not sufficiently benefitted from it due to unawareness, in-accessibility to their habitation, negligence of the administration, inefficiencies of the implementers. There is a need of participatory approach, where health status and health seeking behaviour can be improved in a way that promotes modern healthcare taking along their traditional practices (Debnath, 2014). The situation of availing healthcare services among tribal communities is not up to the level as it has assumed over the period. It can be broadly classified into- Supply side and Demand side factors regulating the rights of health among tribal.

Supply Side Factors

(i) Unavailability of Healthcare Services

On the issue of availability of healthcare infrastructure and services within tribal areas, unavailability of public health infrastructure and lack of human resources is a crucial issue. Sujata Rao (1998) observes that tribal areas are characterised by dispersed population, poor communications, acute poverty, low literacy rate and social and cultural variation and therefore, one cannot adopt the same strategies and approaches as for non-tribal areas. A project report on tribal population of the two districts- Idukki and Wayanad in Kerala throws light on the difficulties faced by people in accessing the health services. To quote one tribal woman from the field observation of the author-

> "*I am living in an interior forest and the health persons visit rarely in my house. The nearest health facility for taking antenatal care is 40 kilometre away at Mananthawady or 73 kilometres away at Kalpetta. We have very limited travelling facility to reach these centres. I used to go to the Govt. hospital rarely to see a gynaecologist, but gynaecologist will not be available on all days and even if available there will be heavy rush. So that I have not gone to the hospital and opted home delivery*",

The above quote reveals the pain of tribal people who lives in remote or interior areas. Moreover, people also revealed that most of the time doctors are not present in the hospital and if they are present also then they just give prescription of the medicine and do not provide free medicines from the health institution (Gangadharan, 2012).

A similar story can be observed in the city of Bhubneshwar, Odisha where migrant Tribal population from East Indian states faces similar problems where government health facilities are far away from their residential places and therefore, they prefer to visit the private doctor who charges them generally 40 to 50 rupees for the consultation and medicines. Therefore, long distance, improper infrastructure and lack of man power prevent them utilising the health services in their respective areas.

(ii) Inaccessibility of Healthcare Services

Inaccessibility of health services is foremost factor affecting MCH service utilisation. According to norms of National Rural health Mission (NRHM), the health institutions have distributed to the ratio of population. It is one health sub-centre per 3000 population in tribal & hilly areas against per 5000 population in plain areas, one primary health centre per 20,000 and 30,000 in tribal & hilly areas and plain areas respectively, one community health centre per 80, 000 population in tribal and rural areas. But, in many regions even if population is low, due to highly scattered population these infrastructures are out of reach for the STs.

Due to the inaccessibility, many tribal communities are prone to low fertility and high maternal and child mortality rate. A study among Korwa tribes of Madhya Pradesh is prone to low fertility rate attributed by high infant mortality, genetic diseases, poor nutrition and inaccessible maternal and child health programmes provided by the government in the state (Pandey and Tiwary, 1996).

A study done by Guthigar and Vaswani (2013) among the tribal families of south Karnataka reveals that around 78 per cent families have to walk at least two kilometres to reach the nearest health primary health facility from their clusters. Mobile health units (MHU) is were introduced long back in 1951 in India to bridge the gap of accessing health services in Tribal areas. MHUs are the portable vehicles containing the team of medical professionals who visits village to village to fulfil the needs of primary health services for the people. A case study done in Tamil Nadu and Odisha shows that due to MHU facilities in the tribal areas of these two states, the accessibility and availability of health services improved a lot. Around 80% people are accessing these MHUs and over 90% people have to just travel less than one kilometre in many areas (Dash et al. 2008). However, in many regions, due to improper road, MHUs are not able to reach to the destination.

(iii) Improper Infrastructure and Lack of Man Power

According to the reports of District Level Household and Facility Survey (DLHS-3) 2007-2008, the unavailability of qualified service providers, equipment and supplies within primary and secondary level health facilities in India is a

challenging task. Rao (1998) have also observe that lack of accommodation, poor infrastructure, large scale absenteeism and vacancies, poorly trained and unmotivated man power are the reasons for near absence of health care services. Many a times, in absence of Doctor, check-up are done by a worker or the pharmacists. This makes them to go to the private facilities instead of government hospitals, making them to spend almost double of the cost.

After introducing NRHM in 2005, ASHA strategy to link community with health services personal, the government proposes one Accredited Social and Health Activists (ASHA) and one Anganwadi worker for per 1000 population which is same for tribal and rural area. But it is observed that in many tribal areas ASHAs are not available or one ASHA is responsible for dealing with more than two or three villages at a time. This also leads to the inability of to meet the needs of the people.

(iv) Absence of Quality Healthcare

As discussed above, apart from unavailability and inaccessibility of health institutions in the tribal areas, improper infrastructure, lack of necessary equipments and manpower in hospitals play major role for the minimal utilisation of MCH services. One of the major concerns attached with the governments' health institutions is to provide quality health facilities to mother and child which is not available everywhere especially in tribal areas. It has been observed that even if infrastructure and manpower is sufficient in health institutions, the quality health care is completely absent in these areas. Access to quality healthcare services is crucial for improved child survival and increased contraceptive use and consequent fertility decline in the developing countries (Bloom et al, 1999) and especially among disadvantaged population.

Studies have revealed that apart from the accessibility issue, the participation of tribal women for institutionalized delivery was found minimal due to the lack of quality delivery services. A study done by Meena (2014) among the tribal of Rajasthan shows that people are still involved in home deliveries as there is no difference in home and hospital deliveries in terms of quality of care. Study found that more than half deliveries took place in home with their traditional methods. Thus, there is a need to analyse these factors on grass root level to achieve the goals of better maternal and child health care services in India.

Demand Side Factors

(i) Traditional Beliefs

Traditional beliefs among tribal people also restrict them for utilizing the MCH services. It is revealed in few studies that due to traditional or superstitious beliefs, women do not visit the to the health facilities available in the area. A study done among tribal of west Bengal, Andhra Pradesh and Kerala presents

similar narrations where the people are reluctant to avail government health facilities due to traditional beliefs. The elder women don't allow their pregnant daughter-in-laws to intake the given tablets and throw them out due to the superstition (Gangadharan, 2012; Rao, 2008; Tarafdar, 2008). For them, their traditional village health healers are more trustworthy for the treatment of various diseases. It is reported that due to strong beliefs on traditional practices, strong trusts on *Dai,* and preference of home deliveries, the utilisation of MCH services among tribal of Maharashtra is poor (Begum *et al*, 2017).

For them, most of the health problems occur due to the bad spirits or evil eye and therefore to get rid of it, still in few communities, people prefer worshipping and offering sacrifice of animal to their village deities. Sarma (2010) examined the cultural practices among the *Tiwas* tribal community of Assam and reveal that due to their supernatural beliefs, they are not interested in availing the government facilities and schemes related to the MCH. In many areas, it is observed that pregnant women carry metallic wears, chilies or lemons, iron hooks or knives to prevent themselves from the evil demons. They believe that due to their previous wrong deeds, there might be possibility of problems in their pregnancy and childbirth due to the influence of evil demons living in rives, forests or any other such natural sources (Sonowal, 2010). Moreover, in many societies people prefer home remedies to treat various health problems. Many of them are also lean towards the herbal medicine or Ayurveda rather than choosing allopathic treatment.

(ii) Lack of Awareness

Due to the lack of awareness also many tribal communities deny to accept the modern health care facilities. They do not feel to take medicines and are unaware about medicines and nutritional supplements given to pregnant women. Moreover, they do not believe in MCH care. For many communities, it is a natural process and hence women do not need to seek special attention or checkups from the doctors. Child immunisation is also pitiable among these communities. Most of the tribal communities of Madhya Pradesh don't feel need to visit the doctors for Antenatal and Postnatal checkups. They believe pregnancy as natural phenomena and therefore, there is no need for the special attention towards the mother of the child (Pandey and Tiwary, 2001). Further, it is found that among the Dur Gond tribal community of Chhattisgarh, there is poor health status during the period of child bearing, low antenatal care, low nutritional level of under five children and the mothers are mainly caused by illiteracy, low socio-economic conditions and most importantly lack of awareness (Chandraker et al., 2009).

(iii) Socio-Economic Barriers

Studies have shown that the higher caste women received the antenatal care, tetanus and iron folic acid packages more frequently than women of the scheduled caste (SC) and other backward classes (OBC) and almost similar findings has been found everywhere in India. With regard to caste, members of OBC had a higher usage of antenatal care compared with SC and scheduled tribe (ST) women. Similarly, while women belonging to scheduled castes and scheduled tribes will less likely than others to deliver their babies in a health institution (Pallikadavath et al., 2004).

Balgiri (2004) in his study among the tribal community in Odisha found that tribal communities are highly disease prone because of inaccessibility to basic health facilities. They are most exploited, neglected, and highly vulnerable to diseases with high degree of malnutrition, morbidity and mortality. Further, study added that the major causes of high maternal mortality are poverty because of which their low protein consumption, unfulfilled nutritional needs, unhygienic conditions and primitive practices lead to low haemoglobin and anaemic state. Another study conducted among tribal communities in Jajpur district of Odisha reveals that malnutrition and nutrition anaemia is very common among reproductive age women and pre-school children (Dash, 2015).

One of the major reasons behind the high maternal mortality is improper obstetric care. According to the *Tribal Committee Report* (2014), the institutional delivery rate is very poor among tribal communities. A survey conducted among Kamar tribes of Raipur district in Chhattisgarh observes various reasons behind not accessing the antenatal care and it shows that around 35% pregnant women does not feel the requirement of ANC check-ups, 13% women were not allowed by their families for the same and 19% reported lack of awareness. Further, 8% women indicated high cost, for 9% women transportation facility was not available in the area and 5% women accepted that they were getting better care at home (Kumar et.al 2015).

Conclusion

Constituting such a large portion of country population, tribal population is vulnerable and deprived in terms of basic necessities, education and most importantly health. All these indicators are basic requirement for the development and due to unavailability of these needs, tribal population are lagging behind when compared to the non-tribal population in the country. When one believes that accessing health care services is fundamental human rights, then it is not justifiable to ignore the conditions of tribal population who face the stigma in accessing these services. It is unacceptable to left behind due to being marginalized. It is not only barrier to the development but harming an individual also as they are suffering not only with physical but mental health also.

It has been observed that tribal areas are prone to poor health status, low nutrition among mothers and child, high maternal and child mortality rate, ignorant immunisation etc. The major factors contributing towards those health issues are remote location, uneven geographical conditions, communication barriers, unavailability of health facilities and poor socio-economic development.

Maternal and child healthcare seeking is very limited among tribal population. The high maternal and child mortality is attributed to unavailability and less accessibility of modern healthcare facilities in the tribal areas. In other words, availability of healthcare infrastructure and services within tribal areas, unavailability of public health infrastructure and lack of human resources is a crucial issue. Inaccessibility is another major issue of under-utilisation of MCH services. Due to the inaccessibility, people have to travel long to reach to these government health facilities and so they generally avoid visiting these institutions.

Lack of accommodation, poor infrastructure, large scale absenteeism and vacancies, poorly trained and unmotivated man power are the reasons to count few for sub-optimal utilisation of MCH services. Many a times, in absence of Doctor, check-up are done by a worker or the pharmacists. Traditional beliefs among tribal people also restrict them for utilizing the MCH services. Many tribal mothers do not utilize the provided medical facilities due to their strong belief on traditional practices or more trust on their own local health healer or practioners. These circumstances also created under lack of knowledge and awareness. In result, many tribal communities deny to utilize the modern health care facilities.

To conclude, it can be suggested that government should not only take responsibility to improve the health infrastructure and services in tribal areas but awareness and sensitization about their health is also needed. Through such programmes, people will understand the importance of quality health, hygiene and sanitation and maintaining their health. For this, it is not necessary to force them into utilizing all the modern services but it could be a combination of their good traditional health practices and the modern health practices. This might lead their willingness of accepting the governments' schemes and programmes related with MCH services. When they are given opportunity, they will actively participate in their own care. There is long way to go on this path, whether it is SDG or a national task, to ensure that '*leaving no one behind'* to access their fundamental right for utilizing health care services.

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CHAPTER 6

Witch Craft, a Correlation Between Tribal Society and Mental Health: A Critical Socio-legal Study

Tribal societies are perhaps the oldest cultures prevalent all over the world. According to Oxford Dictionary "A tribe is a group of people in a primitive or barbarous stage of development acknowledging the authority of a chief and usually regarding themselves as having a common ancestor" These societies are basically based upon their own cultural norms, which may sometime be considered at par with the so called civilized society and sometimes be inconsistent with the normal discourse of civilized society. Moreover, it could not be incorrect to state that certain enactments which are drafted by the civilized societies in the modern era where already pre existent within the cultural norms of the tribal society. The latest mechanisms of arbitration or the principles evolved under the environmental law are few examples all have their base under the norms of the tribal societies.

However, for the beauty of the rose, we also water the thorns and similarly witch craft or witch hunting has become a curse to the tribal societies existing in Jharkhand, though the concept of witchcraft came into existence in the tribal societies in order to eliminate diseases and bring in cure and prosperity in the society with the help of medicinal herbs The total tribal population in the state of Jharkhand amounts to 26% as per the 2011 census. According to the National Crime Records Bureau (NCRB) data, 2013 Jharkhand has witnessed the maximum number of witch-hunting cases in India out of the 160 murders committed in the country with witch-hunting as a motive, 54 were from Jharkhand alone. From 2008 to 2013, Jharkhand saw 220 such murders.[1] The police records

[1]Updated: Dec 14, 2015 22:38 ISThttp://www.hindustantimes.com/ranchi/chapters-on-witch-hunting-human-trafficking-to-figure-in-jharkhand-school-books/story-DaqvVcFIu0IpSGTZlPJumK.html

and the reported judgments indicated 86% primary targets of witch hunting to be women.[2] The term witchcraft has no universal definition, the term 'magic' has been defined in Oxford dictionary as 'The art that, by use of spells, invokes natural powers (the power of nature may be better) to influence events'. The same dictionary defines witch as 'a person, usually a woman, who practices or professes to practice magic or sorcery (there's that mental picture again) especially black magic, or is believed to have dealings with the devil.'[3] It is pertinent to mention here that the witchcraft by itself is not a punishable offence in any of the cultures existing all over the world in the present era moreover, it is considered to be an art of capturing super natural power and using it for the benefit or loss of someone and as such the legal mechanism does not have any framework to catch hold of such an act because there is no co-relation between the person effected and the person who is using the means of witchcraft and as such, the laws of evidence, which is based upon the burden of proof fails to comply to the accused or the victims. As the definition of witchcraft itself provides the myth of supernatural power, so it is generally beyond science and technology to have a grasp of it. On the other hand, when the issue of witch-hunting is taken into consideration, the whole society becomes a part to eliminate the so called witch from the society, in order to save their own families that even personal relationships or the other moral considerations fade out. Sometimes these victims may become prey due to existence of large properties. The so called educated and elite society also does not interfere in such matters relating to witchcraft or witch-hunting because they do not want to fall prey to the cultural and ethical sentiments of the uneducated mob justice by the tribal society. It is pertinent to mention here that on the basis of the above mentioned pretext, the protectors of the rights of the people at large, who have been appointed by the government as the public servants also avoid their duties or neglect to take account of it and as such the reported record of cases relating to witch-hunting is much less as compared to the actual occurrence.

A historical look to Witch-hunting

The history of witch hunting reveals that Europe is considered to be the birth place of witch hunting which commenced in the 15th Century. The first enactment, directed specifically against witchcraft was the Act "De haeretico comburendo" at the instigation of Archbishop Thomas Arundel in 1401. This phenomenon of witch hunting was further given a legal shape during the regime of Queen Elizebeth in 1563 and King JamesI in 1604 by passing enactments against witchcraft[4].

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[2]Economic & Political Weekly EPW MARCH 26, 2016 vol lI no 13

[3]THE ULTIMATE ENCYCLOPEDIA of Spell, Michael Johnstone, 2006 also available on http://npu.edu.ua/!e-book/book/djvu/A/iif_kgpm_Johnstone_The_Ultimate_Encyclopedia_of_Spells_pdf.pdf, last visited on 08.6.2017.

[4]www.witchcraftandwitches.com/history_early_modern.html.

Religion and Witchcraft

The concept of witch craft is prevalent in all the major religions of the world. The concept of witchcraft came into existence during the middle-ages in European sub-continent and as such was taken into consideration by the various protectors of Christian religions such as the Bishops and churches. Moreover, as mentioned earlier enactments were drafted for the purpose of witch trials and legalizing witch hunting. Islam on the contrary prohibits witch craft and also restricts itself to the question of witch hunting but both witchcraft and witch hunting has been accepted under the beliefs of Islamic population and as such the world is at present not unknown to the cases of Muslim witch hunting. Hindu religion again has a strong belief in witchcraft and there are many religious stories existing in the Mahabharata and Ramayana which dwells upon the concept of witch craft and witch hunting.

Factors leading to Witch-hunting

The major reasons of belief in witchcraft are illiteracy, unawareness, unemployment, poverty, blind belief in supernatural powers; politics, property etc. So far as the state of Jharkhand is concerned, as per the general notion, not only old aged women, having a different look, in possession of property, having young daughters are vulnerable to be declared as witches by the society but contrary to this, majority of the victims in the case studies[5] belonged to the age group of 40 to 60 years, showing middle-aged, married women to be the most vulnerable to witch-hunting, although there are a few instances of younger women being labelled as witches as well. In fact witch-hunting appeared to be a prevalent form of violence used to target women fully ensconced in their marital homes.

Mental Illness and Witchcraft

One of the most indispensable reasons, as to why women fall prey to witch hunting, in various small villages of Jharkhand is mental illness. However it is pertinent to mention here that neither the social reformers, nor the government or the legislatures have ever accounted this reason to play a vital role in the act of witchcraft as well as witch hunting. The most important mental illnesses which lead to being falling prey to witchcraft are depression, delirium due to malnutrition, schizophrenia and epilepsy,[6] hysteria, mania etc.

The persons suffering from depression have feeling of guilt and accuse themselves with real or imaginary sins. They may say that they have denied God, blasphemed and have been taken by the devil. Symptoms of committing

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[5]Madhu Mehra, Anuja Agarwal,Witch- hunting in India,Do we need special Laws?

[6]Historical witchcraft and psychiatric illness in Western Europe. R E Hemphill https://www.ncbi.nlm.nih.gov/pmc/journals/269/.

suicide also become persistent in such patients. Medical conditions such as thyroid disorder, deficiency of vitamin or brain tumor may also result to depression. Emotional factors, such as continuous exposure to violence, neglect, abuse of poverty may make people more vulnerable to depression.[7] Thus, the socio economic conditions of a tribal society can very well be equated to the symptoms of depression and as such, it may be one of the reasons why women of tribal society become the victim of witch hunting.

Delirium occurs when the normal sending and receiving signals in the brain become impaired. The most possible causes of this disease are certain medication or drug toxicity, alcohol or drug abuse or withdrawal, metabolic imbalances such as low sodium or calcium, severe chronic or terminal illnesses, fever or acute infection in childhood, malnutrition or dehydration, sleep deprivation or severe emotional distress. The signs and symptoms of this disease usually begin over a few hours or a few days. These symptoms may fluctuate throughout a day and there may be no symptoms for a specific period of days. Symptoms become more prominent during night when it is dark and things become less familiar. Some of the most important symptoms are an inability to stay focused on a topic or to switch topics, getting stuck on an idea rather than responding to questions on a conversation, being distracted by unimportant things, being withdrawn, with little or no activity or response to environment, poor memory, difficulty in speaking or recalling words, rambling or nonsense speech, hallucinations, restlessness, agitation or combative behavior, calling out, moaning or making other sounds, euphoria, apathy, rapid and un predictable mood shifts, personality changes.[8] A comparative analysis of these symptoms with that of a person affected with witchcraft are quite similar in nature. Moreover, the reasons of this disease may be equated to the conditions of tribal societies in general, illiteracy leads to less awareness to the various diseases and infections in childhood, and as such may in the older ages lead to Delirium, poverty may be the other factor responsible for this disease because malnutrition and lack of vitamins is the other factor for the cause of this disease. Use of drugs and alcohol is also prevalent in tribal societies, and as such this may be also one of the reasons of the cause of delirium.

Schizophrenia the most commonly strikes between the ages of 16 to 30, and males tend to show symptoms at a slightly younger age than females. In many cases, the disorder develops so slowly that the individual does not know that they have had it for many years. However, in other cases, it can strike suddenly and develop quickly. Some research suggests that schizophrenia may

[7]American Psychotropic Association https://www.psychiatry.org/patients-families/depression/what-is-depression

[8]http://www.mayoclinic.org/diseases-conditions/delirium/basics/causes/con-20033982

be the result of faulty neuronal development in the brain of the fetus, which later in life emerges as a full-blown illness. Individuals with schizophrenia may hear voices that are not there. Some may be convinced that others are reading their minds, controlling how they think, or plotting against them. This can distress patients severely and persistently, making them withdrawn and, at times, frantic. A sizable proportion of people with schizophrenia have to rely on others because they are unable to hold a job or care for themselves. Many may also resist treatment, arguing that there is nothing wrong with them. Some patients may present clear symptoms, but on other occasions, they may seem fine until they start explaining what they are truly thinking. The effects of schizophrenia reach far beyond the patient as well as their families, friends, and society are affected too. The symptoms of this disease are delusion; the patient displays false beliefs, which can take many forms, such as delusions of persecution, or delusions of grandeur. They may feel that others are attempting to control them remotely, or, they may think they have extraordinary powers and abilities, hallucination; hearing voices is much more common than seeing, feeling, tasting, or smelling things which are not there, however, people with schizophrenia may experience a wide range of hallucinations, affect the persons thought process, blunted emotions responses to happy or sad occasions may be lacking or inappropriate, as the hallucinations and delusions seem so real for patients, many of them may not believe they are ill. They may refuse to take medication for fear of side effects, or for fear that the medication may be poisonous, Evidence suggests that genetic and environmental factors act together to bring about schizophrenia. The condition has an inherited element, but environmental triggers also significantly influence it. Before any acute symptoms are apparent, people with schizophrenia habitually become bad-tempered, anxious, and unfocused. This can trigger relationship problems, divorce, and unemployment. Marijuana and love sex drugs (LSD) are known to cause schizophrenia relapses. Additionally, for people with a predisposition to a psychotic illness such as schizophrenia, usage of cannabis may bring about the first stage of this disease. Certain prescription drugs, such as steroids and stimulants can cause psychosis.[9] An analysis of the symptoms and causes of schizophrenia portrays the similarities with a person claiming to be an expert in witchcraft. The person depicted as witch, also confirms to be enjoying some supernatural powers. Moreover, the socio economic condition, use of drugs and alcohol, nature of family relationships in tribal societies are very much similar to the causes which stimulate this disease. Other factors such as poverty, illiteracy, lack of awareness towards health and hygiene, malnutrition etc. also trigger the process of initiating schizophrenia and again due to lack of awareness women consider themselves to be possessed by some supernatural power and hence fall prey to witchcraft.

[9]http://www.medicalnewstoday.com/articles/36942.php

Epilepsy is a chronic disorder that causes unprovoked, recurrent seizures. A seizure is a sudden rush of electrical activity in the brain. There are two main types of seizures. Generalized seizures affect the whole brain. Focal, or partial seizures, affect just one part of the brain. Stronger seizures can cause spasms and uncontrollable muscle twitches, and can last a few seconds to several minutes. During a stronger seizure, some people become confused or lose consciousness. Afterward they may have no memory of the occurrence of seizures. The main causes of seizure are traumatic brain injury scarring on the brain after a brain injury (post-traumatic epilepsy), serious illness or very high fever, stroke, which is an important reasons of epilepsy in people over age 35, other vascular diseases, lack of oxygen to the brain, brain tumor or cyst, dementia or Alzheimer's disease, maternal drug use, prenatal injury, brain malformation, or lack of oxygen at birth infectious diseases such as AIDS and meningitis, genetic or developmental disorders or neurological diseases[10] are the causes of epilepsy. Seizures are the common phenomenon when the so called, witch goes into transition and is presumed to perform the act of witchcraft. However the other symptoms of epilepsy cannot be straight away equated with witchcraft but the condition of seizures.

Hysteria is another kind of mental illness where the symptoms can be equated to the person calming to be affected by witchcraft. Hysteria is a mental illness which is common only among females. It is a mental disorder which arises from intense anxiety. The patient loses control over his or her acts and emotions and it is usually accompanied by sudden seizures of unconsciousness with emotional outbursts. It is often due to repressed conflicts within the person. Hysteria is derived from a greek word 'hystron', means uterus. Osler a famous psychiatrist defines hysteria as "a disorder chiefly of young women, in which emotional states control the body, leading to perversion of mental, sensory motor and secretory functions." The basic symptoms of hysteria are seductive behavior, high level of emotional dependency, platonic friendships, intolerance, frustration, capriciousness and irritability. During fits, such a person becomes hyper-emotional. He exhibits exaggerated feelings like spells of crying spells and tantrums marked with symptoms like: Increasing Abdominal constriction, Severe cramps and heaviness in the limbs, Palpitations, Suffocation and headache, Clenched teeth, Swelling of the neck, feeling of a foreign body lodged in the throat, laughing or crying without cause in severe cases the symptoms may be wild and painful cries, enormously swollen neck, incomplete loss of consciousness, violent movements, violent and tumultuous heartbeat and convulsions. The hysteria patient usually has a weak will power, craving for love and sympathy and has a tendency towards emotional instability. Hysteria

[10]http://www.healthline.com/health/epilepsy

trances may last for days or weeks. A patient in trance may seem to be in deep sleep but the muscles are not usually relaxed.

The main cause of hysteria is idleness, sexual repression and perverted habits of thought. Heredity may also be a cause for hysteria. A nervous family background and faulty emotional training in the upbringing of the child are also some causes. Fear, worry, depression, mental strain, traumatism and prolonged sickness may cause emotional situations. Hysteria may also be caused due to some situations like death of someone or loss of love.[11] Thus the patients of hysteria are vulnerable to fall prey, in a tribal society to the cause of witch hunting as because most of the symptoms of hysteria are common to that of witchcraft. Moreover the causes which lead to this disease are very much prevalent in a tribal society.

International Law and Witch hunting

So far as the international regime is concerned there is no mention of any document directly relating to witch hunting however, witch hunting is not at all an unknown issue to the world and as such various instances of with hunting can be seen in not only the so called under developed part of the world but also in developing countries. Moreover, even thought there is no direct international document relating to witch hunting,. but these international conventions and treaties can be interpreted to curve national laws for combating witch hunting The Universal Declaration of Human Rights (UDHR), is recognized as a customary practice of International law in India, and provides that all are equal before the law and " are protected against any discrimination"[12] India, being a party to International Covenant on Civil and Political Right, (ICCPR), must "ensure the equal right of men and women to the enjoyment of all civil and political right set forth" [13] Article 26 of this covenant further provides that all persons are " equal before the law and entitled without any discrimination to the equal protection of law" which includes also the discrimination in sex.[14]India is also a signatory to the Convention on Elimination of all forms of Discrimination Against Women, (CEDAW), which provides that, "any distinction, exclusion or restriction, on the basis of sex, which has the effect or purpose of impearling or nullifying, enjoyment or exercise by the women, irrespective of their marital status, on the basis of equality of men and women, of human rights and freedom

[11]http://home-cure.net/hysteria/

[12]Universal Declaration of Human Rights, GA, Res 217A at 71,UN GOAR,3rd session, 1st Plen mtg..,UN Doc A/810 (Dec 12,1948)

[13]United Nations International Covenant on Civil and Political Rights, Art-3, Dec. 16th, 1966,999 U.N.T.S.171, adapted by India on 10th April 1979.

[14]United Nations International Covenant on Civil and Political Rights, Art-3, Dec. 16th, 1966,999 U.N.T.S.171, adapted by India on 10th April 1979.

in the political, economic, social, cultural, civil or any other field."[15] India has also signed, but not ratified the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment[16] and for the purpose of this convention, witch- hunting may be considered as torture. Moreover, the International Covenant on Economic, Social and Cultural Rights,(ICESCR)[17], provides several provisions which relates to deprivation of property in cases of witch hunting. Article 1 (a)(ii), provides that, "peoples may, for their own ends, freely dispose of their natural wealth and resources, without prejudice to any obligations arising out of any international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of his own means of subsistence." Article 11 of this Covenant further recognizes the "right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to continuous improvement of living conditions"[18]

Laws in India and Witch Hunting

India being a party to many international conventions and treaties is bound to design legislations in order to curtail the discrimination between men and women and thus, curtail the scope of witch hunting India is bound to make legislations on the aforesaid conventions and treaties under Article 51 0f the Constitution of India, which provides that India should " endeavor to……foster respect for International Law and treaty obligations in the dealing of organized peoples with one another"[19] This provision provides "a self-evident directive" that India must comply with International Law.[20] Although, it is the duty of the Parliament to enact legislation for incorporating a treaty into a domestic law.[21]

In India there is no specific law relating to prohibition of witch hunting and as such the courts in India take into consideration, the general principles of Indian Penal Code for booking the accused in a case of witch hunting. The various sections invoked generally in such cases are section 302 (murder), section 307 (attempt to murder), 323 (hurt), 376 (rape) and 354 (outraging a woman's modesty) among others. Due to political motivation and to maintain proper international relationships certain states in India have enacted legislations

[15]Convention on Elimination of All Forms of Discrimination Against Women, Art- 1, Dec 18, 1979, 1249, U.N.T.S.13

[16]Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, Dec 10,1984, 1465,U.N.T.S.85

[17]India acceded the ICESCR on 10th Dec. 1979.

[18]International Covenant on Economic, Social and Cultural Rights, Article 11,Dec.16th 1966, 993 U.N.T.S.3

[19]Constitution of India, Article 51(c)

[20]P Chandrashakhar Rao, The Indian Constituti on and International Law,7(1993)

[21]The Constitution of India, Article 253

to prohibit witch hunting. The states which have enacted such legislations are Rajasthan, Bihar, Jharkhand, Chhattisgarh and Odessa, Assam etc.

Law relating to Witch-Hunting in the state of Jharkhand

As Jharkhand was a part of Bihar, prior to 2000, the state of Bihar enacted a legislation titled, "The Prevention of Witch (Diaan) practices Act, 1999, [Bihar-Act No-9 of 1999]. The same enactment was adopted by the State of Jharkhand in 2001 titled as, "The Prevention of Witch (DAAIN) Practices Act, 2001, Jharkhand" This enactment basically deals with provisions relating to identification of witch (diaan), damages for causing harm, abetment in the identification of witch (diaan), procedure for trial and making of rules in this regard. It is pertinent to mention here that this enactment does not provide for any provisions relating to protection of such women who have been identified as witch by the society. Moreover, this enactment also fails to cater the reasons for such identification by the society. This Act also does not provide any emphasis upon the socio-economic conditions of such identified witches. The Act also fails to address the physical and mental health of the identified witches. However, Section 4, states the punishment for causing harm. It states that, "causing any kind of physical or mental torture to any women by identifying her as a Witch (Diaan), whether deliberately or otherwise....."[22], thus the intention of legislatures is very clear that they did not take any account of mental illness as a reason of witchcraft. The punishments provided in this Act are also very meager which ranges from imprisonment for a term of 3 months to six months and fine from Rupees 1000 to 2000. The Act also fails to provide any protection and rehabilitation mechanism for such victims of witch hunting in order to bring them at par with the society as per the mandates of the Constitution of India[23] and other international conventions and treaties ratified by India

It is pertinent to mention here that recently a bill has been moved in Lok Sabha by Shri Raghav Lakhanpal, M.P. titled as The Prevention of Witch hunting Bill, 2016 this enactment, perhaps has taken the mental illness as a cause of witch hunting for the first time comprising thirty provisions The object of the Act provides that this is enacted " to provide for more effective measures to prevent and protect women from 'witch-hunt' practices to eliminate their torture, oppression, humiliation and killing by providing punishment for such offences, relief and rehabilitation of women victims of such offences and for matters connected therewith or incidental thereto" .[24] The paper deals with the short title and extent of the enactment with the definitions. Some definitions such as witch, witchcraft, witch-hunting, Ojha etc. were found for the first time in this

[22]Section 4, The Prevention of Witch (Diaan) practices Act, 1999
[23]Article 14 and 15 of The Constitution of India
[24]Bill No 66 of 2016

piece of legislation. The paper deals with the punishments for offences. This legislation seems to have enhanced the punishments from three to six months in earlier state legislations to three years. The imposition of fine has been also enhanced up to Rupees fifty thousand. Moreover, the legislation for the first time speaks of community punishment under Section 14 , "Where community involvement is proved in causing any offence under this Act, every person of the community involved may be punished with fine which shall not be less than five hundred rupees but may extend up to three thousand rupees and whosoever fails to deposit the said fine shall undergo three months imprisonment excluding the punishment imposed upon him by a court for causing that offence , Section 13 further provides t and also prescribes punishment for the public servant who willfully refuses to register a case or neglects the investigation or tries to withhold facts and evidences with intention to minimize the gravity of the offence. This paper deals with the trials. Under section 14, offences under this legislation have been proposed to be of the nature of non-boilable and non- compoundable. This paper prescribes the measures for preventing and protecting of women. Section 18 prescribes the duties of police officer, whenever receiving a complaint of witch hunting and also prescribes the measures to be taken by such officer for protecting such women from witch hunting. Section 19 prescribes the duties of the Government with regard to witch hunting. These duties have been very nicely enumerated as under:

(*i*) draft appropriate guidelines for the implementation of the provisions of this Act;
(*ii*) Sensitize and train police offices regarding the issue of witch-hunting;
(*iii*) Ensure confidentiality during testimony of victim as well as witnesses;
(*iv*) Ensure proper monitoring and follow up of reported incidences;
(*v*) Provide relief and compensation for victims of witch-hunting;
(*vi*) put in place rehabilitation mechanisms and schemes for victims of witch hunting;
(*vii*) Provide counselling services to victims of witch-hunting;
(*viii*) Promote education and awareness about the evil of witch-hunting and include the issue of witch-hunting in school curricula;
(*ix*) Launch public awareness schemes to inform communities of the provisions of this Act;
(*x*) launch campaigns against superstition and witch-hunting practices and organize padyatras and public awareness meetings with the participation of voluntary organizations, schools, and others especially in regions where the menace of witch hunting is most rampant; and
(*xi*) organise women's groups at village level and draw up creative plans in consultation with such groups to enhance the self-confidence and economic independence of vulnerable women in such areas.

This bill dwells upon the Special provisions, wherein, the rescue of the victimized women is given paramount consideration and the Magistrate is empowered with special powers in this regard. The other provisions in this paper are related to free medical assistance to the victim, rehabilitation, and free legal aid. Thus, it can be said that this piece of legislation , for the first time took into consideration the role played by the community at large in such offence, it also tried to grip the public servants for their inaction in such offences. This enactment also speaks about free medical relief, rehabilitation and legal aid. However again, it has failed to take account the mental illness as a cause of this offence against the women victims.

Judicial Activism and Witch-hunting

Judiciary has always played a vital role in the Indian context to bridge the gap between the legislation and the societal needs by interpreting the legislations to make them effective and workable, examples of which can be demonstrated through various case studies, wherein, the courts have given meaning to the existing legislation where the legislation had failed to put something. In Mrs. Sashiprava Bindhani vs Unkown[25], the Petitioners pleaded that India being a signatory to International Conventions such as the UDHR, CEDAW etc., must enact appropriate law to curb the menace of witch-hunting, which is prevalent in this State. In this instant case, the practice of witchcraft, known as Banamathi prevalent in state of Karnataka was referred. A committee consisting of eminent Professors were asked to investigate the matter and report. The committee after detailed investigation made the following conclusions that "People have been suffering from this so called witchcraft i.e. Banamathi due to various causes. Some of the prominent causes have been fear, ignorance, superstition, personal and family problems, poverty, religious feuds, and village politics. This phenomenon of Banamathi is more prevalent in remote villages cut away from the main stream of life. It is also a fact that most of the victims are women. Even among women those belongs to marriageable and child-bearing age groups seem to be more prone to this problem. All the sufferings of the victims attributed to Banamathi fit into familiar patterns of mental and physical diseases. Most of these are psychiatric cases. Many of these attacks were induced by a simple suggestion by the doctors and were also terminated by a similar suggestion. These people have been suffering from a variety of psychological disorders. Hysterical neurosis, a form of psychiatric disturbance, is the most common. This is characterized by episodes of abnormal behaviour, like screaming, developing fits, becoming unconscious, tearing away of clothes, inability to speak and so on. These are directly understandable in terms of strong socio-cultural beliefs, family and personal problems, poverty etc. It is common knowledge

[25]W. P. (C). Nos. 17638 of 2011 and 6287 of 2012

that such internal conflicts resulting in hysterical neurosis are found in other countries also. Their effects would be in accordance with the prevailing social and other conditions. In a few villages these psychological disturbances have assumed the form of 'mass hysteria' as witnessed in Yadlapur and in Benekanahalli villages. There are other kinds of neuroses like depression, obsession etc. from which some of the victims have been suffering." The following guidelines were also delivered through this judgment-

(i) Public awareness programmes should be launched in the Grama Panchayats to eradicate the superstitions of witch-craft;

(ii) Health camps should be organized in different village level to detect cases of the psychologically disordered, which may lead to a false acquisition being possessed or being a witch;

(iii) The Investigating Agency in cases involving allegations of witch-hunting, in order to avoid the witnesses turning hostile should take steps to get statement of the witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973.

Similarly, in Court on Its Own Motion vs State of Jharkhand,[26] spreading of public awareness among the people was taken into consideration. It was stated by the court that,

> *"It has no doubt taken certain effective steps with regard to holding awareness programme vis-a-vis witch hunting, but in our view, it would be most appropriate, if JHALSA co-ordinates with the Social Welfare Department of the State and kicks off effective awareness programme with regard to witch hunting covering the most affected districts, ...".*

Thus it may be said that the Indian judiciary has been much effective in combating the crime of witch-hunting, not only by applying the legal mechanism but also taking into consideration the other aspects such as public awareness and the medico legal concerns.

As a concluding remark it can be construed that the existing laws in the state of Jharkhand is not at all an efficient mechanism to combat this evil of the society, and as such proper laws in correlation to the socio-economic condition of the victims should be enacted. For the purpose of sensitization and public awareness, recently the government has suggested to enlist this concept of witch hunting to Textbooks for class 6 to 8 students in Jharkhand government schools will soon have chapters on witch-hunting and human trafficking. The state school education and literacy department is planning to incorporate lessons on the two issues in the syllabi from the 2017 academic session bid to educate the new generation about ill-effects of these evil practices and to curb the menace.[27]

[26]W.P (PIL) No. 3684 of 2015

[27]Available on http://www.hindustantimes.com/education/jharkhand-school-bo oks-to-have-lessons-on-witch-hunting/story-OiMeQnIxlG8PFOMC692hzK.html (last visited on 16.08.17 at 6. P.m.)

The other concerned which has been taken into account by the author relates to medico-legal condition of the victims. It is pertinent to mention here that the legislatures while curving the enactment have fail to take account of this condition. Moreover, the sensitization of public for the above referred reason has not been taken care of even by the government agencies and the NGOs working in this field. Through a personal survey the three mental hospitals in Jharkhand namely RINPASD, CIP and Davis the author found that only two cases related to witch hunting has been recorded in last one decade.

Thus the author suggests that each and every victim of witch hunting should be brought before the medical authorities to confirm the mental status of the victims. Proper rehabilitation schemes should be designed in order to bring these victims at par with the society, for this purpose the authorities under the rehabilitation council of India Act, 1995 should be properly trained to deal with such cases. Protection of victims of witch hunting should be the paramount consideration of the administrative authorities and as such legislations should be amended to give effect to it.

CHAPTER 7

Injustice to Tribals of Ladakh

ABSTRACT

Ladakh has demanded Tribal Status ever since the late 1970s. Only a few Ladakhi ethnic groups have been accorded the said status, whereas more than 98% of Ladakh carries forward the rich tradition of ancient customs and practices, qualifying them as scheduled tribes, thereby guaranteeing them added constitutional privileges. The grave injustice suffered by Ladakhis ever since the Independence of India, due to apathy of the State Government has led to chronic lack of development and immense suffering of the people. Some of the issues and concerns of the tribals of Ladakh are summarised herein.

INTRODUCTION

Ladakh is known throughout the world as a popular destination for the adventurous traveller. It is famous for its many wonders. It holds the mysterious 'Magnetic Hill' which presents phenomena that is overwhelming for most visitors. The world famous glaciers of Ladakh have been discussed in many international forums, especially the Siachen Glacier, which is notably the world's highest battlefield. The Border Roads Organization, under the Union Government of India, proudly claims the world record of building the world's highest motorable road in Ladakh[1], which runs through Umling La. It has the honour of surpassing its own previous world record of building the 'Khardong La Pass' (which used to be the highest motorable road at 17,900 Ft.) which also lies in Ladakh. The Indian Army personnel have the honour of strategically holding Siachen, guarding against repeated and constant attack and winning some of the world's most impossible battles upon this freezing battle ground, where the efficiency of

[1]It runs at a height of 19,300 Ft. above sea level.

machines and men decreases by more than 50% due to the vastly diminished oxygen levels and frost at that staggeringly high altitude.[2]

Ladakh is such a paradox of sorts. The climate is very harsh. Yet the beauty of the region is bedazzling. With the temperature dipping below minus forty degrees Celsius in winter and upto minus 10-20 degree Celsius in summer, a person can still get sun burned if they venture outside for too long on high mountain climbs (due to the low density of the air at this high altitude). Even though Ladakh is famous for its arctic and desert climate, it still surpasses the beauty of Kashmir with jewels like the magnificent Nubra Valley, famously known as the 'Vale of Flowers'.

Despite all these wonders, one might ask why it is a hidden marvel, deprived of the kind of thronging tourist inflow that it deserves. The reasons lie in the fact that Ladakh is one of the most neglected regions of the State of Jammu and Kashmir and also one of the most neglected regions of India.

It is made up of Gilgit, Baltistan, Leh and Kargil. Unfortunately, most part of Gilgit and Baltistan have been under hostile military occupation of Pakistan since 1947. Therefore, the remaining portions of Ladakh are the only parts that have seen any development ever since. Today we categorize the unoccupied Ladakh as being administratively divided into two main broad districts, namely Leh and Kargil. Ladakh has remains of Vedic culture from thousands of years ago. It has magnificent pre-buddhist temples and architectural remains, most of which are yet to receive the kind of international attention that they deserve. Its natural wonders like the world's highest salt water lake – 'Pangong Lake' and the historical structure of Zorawar Fort (housing temples of Durga and other ancient Indian Goddesses) also rarely find a mention when promoting the heritage and beauty of the State of Jammu and Kashmir. All these sensationalattributes of Ladakh are reminiscent of tribal culture.

TRIBAL CULTURE

As per the Cambridge dictionary, the word 'tribal' means 'of or relating to a tribe'.[3] The word 'tribe' means 'a social division in a traditional society consisting of families or communities linked by social, economic, religious, or blood ties, with a common culture and dialect, typically having a recognized leader' as per the oxford dictionary.[4]

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[2]The oxygen levels drop by more than 50 to 60% at this high altitude.

[3]For more details see https://dictionary.cambridge.org/dictionary/english/tribe last referred on 12th July, 2018 at 18:19 IST.

[4]For more details see https://en.oxforddictionaries.com/definition/tribe last referred on 12th July, 2018 at 18:20 IST.

INDIAN TRIBES

Indians associate the term 'tribal culture' with ancient culture, since there was no terminology of 'tribe' in ancient India. India has been a land of immense diversity and cultural superiority compared to the rest of the world. There is great ancient pride associated with indigenous culture and tribal roots, especially when it comes to India. In fact, as has been famously stated, "When many cultures were only nomadic forest dwellers over 5000 years ago, Indians established Harappan culture in Sindhu Valley (Indus Valley Civilization)"[5] These were indigenous tribal cultures as per the dictionary meaning of 'tribal' in a western understanding. Furthermore, India was one of the richest countries till the time of British rule in the early 17th Century[6]; at a time when India was dominated for the most part by what the British termed as tribal peoples and cultures. Every so called tribe had a reputation for excellence in one sphere or another. For instance, the Adi, or Bangni-BokarLhoba hill tribe of the northern and north-eastern regions of India had a reputation as fierce warriors.[7] Ayurveda, the most ancient of medicine, originated among the tribal culture of India. Tribal culture is the most revered and ancient of all culture. It is the real wealth of India.[8] The Konyak tribes of Nagaland are recognised among other Nagas by their facial tattoos. They are famous as skilled warriors and as being extremely disciplined in their way of life.[9]According to a genetic study by the Centre for Cellular and Molecular Biology (CCMB), the tribes of the Andaman and Nicobar Islands of India can be traced back 65,000 years.[10]While most of the world is still promoting women's empowerment, the tribal cultures elevated women to a pedestal. Known for its enhanced social status for the women folk, the Khasi and the Garo tribes of Meghalaya are one of the few societies in the world that follows a matrilineal system where women are supposed to shoulder the responsibility of the household.[11]

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[5]For more details see http://knowindia.gov.in/my-india-my-pride/interesting-facts-about-india.php last referred on 10th July, 2018 at 18:20 IST.

[6]Ibid.

[7]For more details see https://www.thebetterindia.com/92039/immagine-photo-story-states-of-india/last referred on 9th July, 2018 at 18:30 IST.

[8]For more details, especially concerning the tribes of Arunachal Pradesh, please refer https://www.slideshare.net/royalroutes/the-tribal-culture-from-the-past-to-present-in-ancient-india last referred on 10th July, 2018 at 18:30 IST.

[9]For more details see https://www.thebetterindia.com/92039/immagine-photo-story-states-of-india/last referred on 9th July, 2018 at 20:30 IST.

[10]For more details see https://theculturetrip.com/asia/india/articles/the-tribes-of-andamans-a-look-at-the-first-indians/last referred on 10th July, 2018 at 19:30 IST.

[11]For more details see https://www.thebetterindia.com/92039/immagine-photo-story-states-of-india/last referred on 9th July, 2018 at 20:30 IST.

BRITISH DESIGNATION OF TRIBAL OR EXCLUDED AREAS

During the Constituent Assembly Debates[12] of 1949[13],the Honourable Shri GopinathBardoloi (Assam: General) when speaking about the persons that the British had designated as tribals of Assam, conveyed the situation that the British Raj had created for people that were designated as tribals throughout India.

He stated, "It is not unknown to you that the rule of the British Government and the activities of the foreign Missions always went together. These areas were formerly entirely excluded areas in the sense that none from the plains could go there and contact them. That was the position till 15th August 1947, when India became independent. The foreign rulers till then had in these areas power to send out of the place anyone they desired within 24 hours, Again, Sir, some of these areas were war zones. During the war, the then rulers and officers developed in the minds of these tribal people a sense of separation and isolation and gave them assurances that at the end of the war they will be independent States managing their affairs in their own way. They were led to believe that the entire hill areas would he constituted into a province and put under some irresponsible Governor. You might possibly have read in the papers that plans were hatched in England in which the Ex-Governors of Assam evidently took part, to create a sort of a Kingdom over there."[14]

He brought up the pertinent point that by the time the British left India, the people that had been designated as tribal people, "were already fully suffused with these ideas of isolation and separation".

He also praised many practices of the so called tribals, by explaining, "Sir, it is necessary to mention here that there are certain institutions among these hill tribals which, in my opinion, are so good that, if we wanted to destroy them, I considered it to be very wrong. One of the things which I felt was very creditable to these tribals was the manner in which they settle their disputes. Cases which would go in the name of murder according to our Penal Code were settled by these people by the barest method of Panchayats decision and by payment only of compensation. Then, the democracy which prevails there through limited in the sense it is confined only to the tribals of a clan or region-will rouse the admiration of any disinterested student. And again take the instance of their village administration. The district authorities have indeed very little to concern themselves with the way things go on there. Take again the case of AoNagas who distributed the entire functions of the society through certain age groups of people in their society. The boys would perform certain simple

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[12]Constituent Assembly Debate of Tuesday 6 September, 1949

[13]Constituent Assembly Of India - Volume IX

[14]Constituent Assembly Debate of Tuesday 6 September, 1949 (Constituent Assembly Of India - Volume IX).

functions, leaving the sturdier functions of the State to the adults, while the elders would give their judgments in cases of disputes and order distribution of lands for 'jhuming' and things of that kind. In other words, they are exercising a certain amount of autonomy which, I thoughtand the members of the Tribal Sub-Committee thought, should be preserved rather than destroyed. What is necessary for good government is already there."[15]

The British purposefully isolated the designated excluded areas or what they termed as tribal areas, in order that the rest of the Indians of this country would not have any idea about what is going on in those areas, due to blocked ingress or egress. They also created animosity between one tribe and another, which was contrary to the past practices of inter-marriage of the tribes. Furthermore, they did not allow the people from the excluded areas to intermingle with people from other parts, whereas in pre-British India, there was no such restriction and it was common for people to marry in different ethnic groups, without any such term as 'tribe' or 'tribal'.

This fact was highlighted in the Constituent Assembly debates by honourable member Mr.Rohini Kumar Chaudhuri. He stated, "In truth, Sir I say I have no information worth the name about the tribal areas and at the same time, I shall say that none of my honourable Friends here, not even the Honourable the Premier of Assam, has much of in information about the tribal areas in India. .. The reason is not due to the negligence or indifference of the Honourable Premier but is due to the state of things which existed before the independence of this country. The Honourable Premier when he was the Honourable Premier before Independence came to India had not the right to visit the tribal areas; he did not have free access to these areas and he could have gone there only with the Permission of the Governor and not otherwise. That was the position. The Honourable Rev.Nichols Roy who was also one of the Ministers—he too could not have gone to any other tribal areas, except perhaps to Khasi Hills. As a matter of fact he never went anywhere except perhaps to Naga Hills on business. I do not know, but absolutely there was no means of knowledge either by himself or by anybody in the public or by anybody in the Ministry to know about these tribal areas. Sir, these tribal areas were kept as a close preserve by the British people. When the I.C.S. officers came to India, their first concern was to find out territories in the Province of Assam where there were no mosquitoes, there were no lawyers and where there were no public men. That was the first aim of the officers there, and whatever rules they framed for the administration of justice in these hill areas, whatever rules they framed for the conduct of business, these rules were framed in order to keep these tribal areas exclusively as a different country from the rest of India,

[15]CAD Vol.IX.

where Europeans could live as Europeans, enjoying the same climate., enjoying the same authority and enjoying whatever it pleases them to get in India. That was the whole object. That was the object. Therefore, none but the Christian missionaries, and missionaries of no other religion, were allowed to visit those areas. There was no provision in the rules and regulations that a man should be defended by a lawyer or any one of that kind, even in a most serious criminal case, because he had no right to be defended. He can get special permission to be defended; but he had no right to be defended; not to speak of civil courts. No lawyers were allowed to remain in these hills and practise there. No other people were allowed to migrate to these areas except with the permission of the authorities. The British wanted to keep the people of these areas as primitive as possible. I tell you, and the House will be surprised to learn that in the Naga Hills, - Naga means naked, - people used to go about naked in the past. There was a Deputy Commissioner who used to flog any Naga who was dressed in Dhoti. The British wanted the Nagas to remain as they were; they should not clothe themselves properly; they should not live like civilised men. That was the position, I may tell you."[16]

Another member Mr.KuladharChaliha reiterated, "Dhoties were not allowed to be worn by the Nagas. That was the order of the Deputy Commissioner all the time."[17]

Mr.Rohini Kumar Chaudhuri added "What is more, Sir, you will be surprised to learn that before the advent of the British, these Nagas were friendly with the Assamese. They had adopted the Assamese language. This was so till about ten years ago when the Roman script was introduced forcibly by the British officers. Even up to that date Assamese used to be the court language of the Nagas. During the last ten years, they have tried to substitute the ordinary Bengali by the Roman script. The same sort of rules apply to the Balllipara Frontier tract, the Sadiya frontier tract and all the Hill areas, including the Garo hills. In the Garo Hills there are a large number of non-tribal people. Even in the Garo Hills, Assamese and Bengali used to be the court language before in the early days of the British occupation. The British gradually substituted these scripts and language and introduced English."[18]

When speaking about matters concerning what was designated as the Sixth Schedule of the Draft Constitution of India, the Honourable Dr. B. R. Ambedkar explained, "The tribal people in areas other than Assam are more or less Hinduised, more or less assimilated with the civilisation and culture of the majority of the people in whose midst they live."[19] By this, the honourable

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[16]Constituent Assembly Debate of Tuesday 6 September, 1949
[17]Constituent Assembly Of India - Volume IX
[18]Constituent Assembly Debate of Tuesday 6 September, 1949
[19]CAD Volume IX

Dr.Ambedkar clearly indicated that he recognised the British isolationist policy, which resulted in the deprivation of growth and chronic lack of development of the tribals of Assam.

LADAKH'S DEMAND FOR TRIBAL STATUS

In 1989, the government of India granted a request from Ladakh for designation as members of scheduled tribes.[20] The passing of the Constitution Scheduled Tribes Order in October 1989, allowed for increased constitutional rights as well as the much needed avenue to allow economic benefits to Ladakhis from the Union Government of India.[21]

Bruce Bonta has argued that, "In 1989, the government of India granted a request from Ladakh to designate the Ladakhi as members of scheduled tribes—but the people of the region were not really satisfied".[22] The reason that the Ladakhis were dissatisfied was that they wanted tribal status for all Ladakhis. This was not done. Only a few pockets of Ladakhis were given tribal status. As per the Government of India Census of 2011, Scheduled Castes (SC) constituted 0.1%, while Scheduled Tribes (ST) were 53.1% of total population in Leh,Ladakh.[23]

Bruce Bonta adds that, "…the Ladakhis do not think of themselves in the language of tribalism or indigeneity, as many other minority groups in India do".[24] Yet, history shows that Ladakhis yearn for the tribal status that the Constitution of India owes them.

In November 2016, on the basis of the fact that 98 per cent of its population belongs to the Scheduled Tribes (ST) category in the Ladakh region, the Leh Autonomous Hill Development Council (LAHDC) demanded declaration of Ladakh as a tribal area under the 6th Schedule of the Indian Constitution.[25]

In fact the reason why Ladakhis did not avail of tribal status from the time of the formulation of the Constitution of India was clarified in the Constituent

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[20]For more details see https://cas.uab.edu/peacefulsocieties/2006/12/21/ladakhi-attitudes-toward-tribal-status/ last referred on 1st July, 2018 at 19:30 IST.

[21]Order was passed by the President of India, conferring tribal status upon select ethnic groups in Ladakh.

[22]For more details see https://cas.uab.edu/peacefulsocieties/2006/12/21/ladakhi-attitudes-toward-tribal-status/ last referred on 10th July, 2018 at 18:20 IST.

[23]As per information from the Office of the Registrar General & Census Commissioner, Ministry of Home Affairs, Government of India. For more details see https://www.censusindia.co.in/towns/leh-ladakh-population-leh-jammu-and-kashmir-800047 last referred on 1st July, 2018 at 19:36 IST.

[24]For more details see https://cas.uab.edu/peacefulsocieties/2006/12/21/ladakhi-attitudes-toward-tribal-status/ last referred on 10th July, 2018 at 18:20 IST.

[25]For more details see http://www.tribuneindia.com/news/jammu-kashmir/community/council-for-declaration-of-ladakh-as-tribal-area/330139.html last referred on 1st July, 2018 at 18:30 IST.

Assembly Debates itself, though the clarification was not specific to Ladakh. During the debate of 19th August, 1949, the honourable member Mr.Yudhisthir Mishra (Orissa: General) explained that, "in accordance with the Cabinet Mission's plan, the Tribal Advisory Committee was set up to report about the administration of the tribal areas and the provisions to be incorporated in the Draft Constitution. The Advisory Committee has submitted its report and the present provisions have been incorporated in the Draft Constitution according to that report. Now, Sir, the Tribal Advisory Committee did not then enquire into the conditions of the tribal people in the Indian States as it was not within its scope. In the meantime, however, a large number of Indian States have been integrated into the neighbouring provinces and they will now be administered as parts, of those provinces. It is therefore neat and proper that the tribal people of these small States should also get the benefit of the present provisions. In the original draft, the States were excluded from the operation of these provisions regarding the scheduled tribes but they have been included in the amendment just moved by Dr.Ambedkar. When the backward tribal people of the provinces will have the benefit of the provisions of the Fifth Schedule, there is no reason why the aboriginal tribes of the States under the same administration should be excluded."[26] Jammu and Kashmir being an Indian State, it did not come under the purview of the investigations of the Tribal Advisory Committee and therefore, Ladakhis were overlooked. Had the jurisdiction of the said Committee extended to the Indian States, in addition to the Provinces, Ladakhis would have tribal status since 1949.

In their popular book titled 'Ladakh Through the Ages, Towards a New Identity', authors ShridharKauland H. N. Kaul write about how the demand for tribal status goes way back.[27] Ladakhis put forth the demand of tribal status through the Ladakh Action Committee in 1980s, whereas its demand was being met with repeated assurances at election time, but with no follow up on the part of the State authorities. Finally, the authors tell of how, "At the persistent requests of the Ladakh Action Committee, a meeting of its delegates from Leh and leaders from Kargil, headed by KushokBakula, was held with Mr. G. M. Shah, Chief Minister and other ministers on August 28-29, 1984 in Srinagar. In the meeting, the Chief Minister himself raised the issue of grant of Scheduled Tribe Status to all Ladakhis and assured the delegation that it would not return to the region empty handed…..another delegation from Ladakh which, among others, included Mr.SonamWangyal, former Minister of State, Government of Jammu and Kashmir, called on the Chief Minister again on January 27, 1985 at Jammu.

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[26]Constituent Assembly Debates On 19 August, 1949 (CONSTITUENT ASSEMBLY OF INDIA - VOLUME IX)

[27]In fact, it goes further back than the late 1970s and early 1980s.

The delegation expressed unhappiness at the delay regarding redressal of Ladakh's grievances."

The authors add that the necessary recommendation was made to the Government of India by the State Government of Jammu and Kashmir under provision of Article 342 of the Constitution of India. A mini census was then conducted by the Registrar General of India to identify and render the conferring of tribal status on select ethnic groups in Ladakh. In addition to KushokBakula's contribution in this valiant attempt at alleviating the problems of Ladakhis, he also was a part of various initiatives to abolish different types of prevalent Ladakhi social evils like the zamindari system, etc.

DEVELOPMENT IN LADAKH

Bruce Bonta also writes that, "Ladakh has benefited from generous per capita national government spending".[28] But, it has been seen that over the years, the funds for development of the Ladakhis are invested by the Union Government of India, yet assigned to the State of Jammu and Kashmir; which, unfortunately, is rarely used for actual development of Ladakh. Therefore, ground level data hardly substantiates the claim that Ladakhis have actually benefitted from national government spending in India. The converse can actually be proved from statistical data of development in Ladakh.

PRIMARY EMPIRICAL DATA ON LADAKH

For an actual ground level empirical study let us take the state of affairs in school education in Ladakh. While school education is a necessary basic development requirement, there is the essential need to provide basic sanitation, facilities, drinking water, an elementary workable public transportation system and school infrastructure in order to make education accessible and to implement development in education of the children of Ladakh.

If one reads'Education and its Infrastructure in Ladakh'[29], which is a 'Primary Intensive Study of Ground Level Challenges and Issues in Leh and Kargil', one will find that Ladakh suffers from chronic underdevelopment. The study covers every part of Ladakh, however remote, and it was a gruelling task to reach the remotest parts of this place that is one of the coldest inhabited regions on earth. "The shocking state of affairs encountered by the Survey Team completely shattered the preconceived notions of the volunteers that

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[28]For more details see https://cas.uab.edu/peacefulsocieties/2006/12/21/ladakhi-attitudes-toward-tribal-status/ last referred on 10th July, 2018 at 18:20 IST.

[29]Authored by Pradeep Kumar Sharma, United P.C. Publishing, United Kingdom, ISBN: 978-3-7103-3450-4, Release Date: 29.05.2018. For more details see https://www.united-pc-publishing.com/no_cache /books/biography-politics-current-affairs/politics-economics.html last referred on 10th July, 2018 at 18:25 IST.

every school should atleast have basic sanitation facilities, electricity, furniture and water supply."[30]

One finds that the study revealed, "Unlike Kashmiri schools, there are next to no State government schemes implemented for the Ladakhi students, even though Ladakh is roughly four times the area of Kashmir. Most of the students and teachers who responded to the survey questionnaire evinced a general feeling of pronounced State Government bias against Ladakh. There certainly is abundant evidence of State Government apathy towards Ladakh. The Union has shown interest in providing funds to the Jammu and Kashmir government as a whole. The Union has steered clear of directing how the funds (Union Government aid to the State) should be utilized, thereby not in any way guaranteeing that Ladakh get its rightful share of the pie."[31]

The United Nations Human Development of 2010 best expresses the regrettable state of affairs in regions like Ladakh in the words, "Many countries have made great gains in health and education despite only modest growth in income, while some countries with strong economic performance over the decades have failed to make similarly impressive progress in life expectancy, schooling and overall living standards. Improvements are never automatic—they require political will, courageous leadership….."[32]

CONCLUSION

The 2015 survey compiles primary data and is a primary source of information. It revealed many startling misfortunes that the Ladakhi people are faced with. For example, despite being keen students and intelligent learners, in 2008, only 28% Ladakhis passed the matriculation exam. This was not due to want of dedicated teachers either. It was found that the language of instruction was a big factor. Ladakhis are not taught in their native tongue. They used to be taught in Urdu upto the eighth grade and then the language of instruction was changed to English for the remaining two years. This, despite the fact that Urdu was always a foreign language for Ladakhis. They never conversed in Urdu in any walk of life. Furthermore, for most of us, the medium of instruction for all subjects is not changed by the school after we finish eighth grade. It creates a situation wherein we have been grounded in one language and then have to write the matriculation exam in a completely different language, which is unnerving and hardly conducive for good results in passing the matriculation examination.

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[30]Pradeep Kumar Sharma, 'Education and its Infrastructure in Ladakh', United P.C. Publishing, United Kingdom, ISBN: 978-3-7103-3450-4.

[31]Excerpt from the introduction chapter of the book, 'Education and its Infrastructure in Ladakh'.

[32] For more details please visit http://hdr.undp.org/sites/default/files/reports/270/hdr_2010_en_complete_reprint.pdf last referred on 10th July, 2018 at 18:25 IST.

Despite repeated requests from the Ladakhis to make improvements in the education system, the State Government of Jammu and Kashmir paid little or no attention to the problems.

Primary research in 2015, has shown that 70% of the schools in Leh District are in need of proper infrastructure. Infrastructure in Kargil district is also so poor that in some establishments only about 10 to 15 students attend the school. Unmaintained roofs, unclean classrooms, broken blackboards and lack of benches were some of the problems faced by the schools. 52% of the Ladakhis expressed strong dissatisfaction with the condition of schools in Ladakh. More than 54% of the schools had no separate toilets for boys and girls. More than 50% of the schools had no playground as per the survey of 2015.[33] Apart from the generous support of the Indian Army, the State Government (uptil 2015, when the survey was undertaken) took no interest in providing computers to schools. The Indian Army also provides free transportation facilities and other essential supplies to schools, because the State Government has not provided the same ever since Indian Independence in 1947. Drinking water facility is sorely lacking and in many schools there is not even a single toilet, so the open compound or backyard of the schools are used for defecation. There are so many more startling revelations regarding the lack of basic infrastructure for school students, in Ladakh, that will render the rest of India and the world shocked and dumbfounded.

[33]As per Chapter V of the Empirical Work titled, 'Education and its Infrastructure in Ladakh', authored by Pradeep Kumar Sharma (the author herein) United P.C. Publishing, United Kingdom, ISBN: 978-3-7103-3450-4.

CHAPTER 8

Forest Rights of Tribal's in Jharkhand

ABSTRACT

Forests are the basic life support system of the planet. The green giants not only support rich biodiversity with variety of products and services but are also considered as the major source of revenue food and shelter. The entire life of indigenous people revolves around the forests and therefore their right to forest is always juxtaposed to the Forest and Environmental Laws. The present paper focuses on the Forest rights of Tribal's in Jharkhand. The aim of this paper is to throw light on the rights of the tribal's with special reference to the forests act right from pre independence to till date. Forests management and conservation program cannot succeed without the support of indigenous people therefore a holistic approach is required which focuses on the paradigm shift on FRA and JFM. For the state like Jharkhand what is important is amendment in Indian Forest Acts to remove the legal and procedural impediments for the successful implementation.

Keywords: Forest, Tribal , Forest Rights, Jharkhand, *Khatian* Part II, Forest Act 2006, Reserve Forest, Protected Forest, JFM, FRA

Introduction

Jharkhand was declared as the homeland of the tribal's and the 28th State of the Union on 15 November 2000. The state was carved out of Bihar as a result of mass agitation carried out by Jharkhand Mukti Morcha which incited the government to create Jharkhand as a full-fledged State. The literal meaning of Jharkhand is 'the territory of forests'.[1] The state has border connected with Bihar to the north, to the west Uttar Pradesh and Chhattishgarh, to the south, Odisha and West Bengal to the east. The state has an area of 79,000 sq km

[1]http://documents.worldbank.org/curated/en/620621504863280205/text/119608-WP-P095390-PUBLIC-7-9-2017-10-6-10-JHARKHANDFinalReport.txt

which gives residence to 32 million people according to 2011 Census[2] .Ranchi is the state capital of Jharkhand. A unique feature of the state is that it has city like Jamshedpur which is known to be a industrial city of the state on one hand at the other hand it has a vast forest track in the Santhal Pargana and the Chotanagpur plateau.

Table 1: Some Important Features of Jharkhand[3]

Geographical area of the State	*79,714 Km²*
Forest area	*23.605Km²*
Reserved Forests.	*4387 Km²*
Population. .	*329.7 Lakh*
%age of Tribal Population -	*26.20%.*

FOREST AND THE TRIBALS

Forests are the basic life support system of the planet. The green giants not only support rich biodiversity with variety of products and services but is also considered as the source of revenue fodder, fruit, employment and shelter with major and minor products of medicinal value. It is a known fact that entire life of indigenous people revolves around the forests. Therefore majority of the tribal population lives inside the forests and makes socioeconomic living on the forest and forest produce. In India the indigenous people are also known as "Advasi" which means the original inhabitant of the subcontinent, they are also referred as "Schedule Tribes by constitution because the identity of an indigenous people is closely associated with the forest since ages. The reasons to this fact is very vital as the forests provides basics necessities such as food fodder shelter on one hand and raw materials, wood, firewood, herbal medicines; fodder for cattle and grazing areas; and many other materials on the other hand. It is known fact that the tribal's have spent their life in the forests for centuries with harmony, peace and sense of security in developing a symbiotic relationship with the forest. The relation is so strong that even after death; the deceased tribal is laid to rest in a grave close to a forested region by most of the hunting and gathering tribes of India.[4] The preamble of the constitution guarantees equality for social, economic and political up liftmen of its citizens. Hence the Constitution of India incorporated enabling provisions for the "Scheduled Tribes"[5] and

[2]Satyakam Joshi "Tribes, Land and Forests: Emerging Legal Implicati ons with reference to PESA and FRA" ''Governance, Resources and Livelihoods of Adivasis in India: Implementation of PESA and FRA during 18-19 November, 2016 at NIRDPR, Hyderabad.

[3](*Census of India,2011*)

[4]Kakada Jayaprakash "Short essay on Forest and Tribal" http://www.preservearticles.com/2012011320772/short-essay-on-forest-and-tribal.html visited on April 24,2018.

[5]The term 'Scheduled Tribes' first appeared in the Constitution of India. Article 366 (25) defined scheduled tribes as "such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this constitution".

empowered them to avail the opportunities enabled them to exercise their rights and safeguards and link them to the mainstream. The provisions are in the form of reservation and measures to be taken to provide them equal status as guaranteed by the law of the land.

The colonial forest administration was always revenue oriented and manipulative, in nature so they never recognized the rights of forest dwellers.[6] The Indian Forest Act of 1927 was prima face forest governance which was used to convert forest or waste land into reserved area of the government. Therefore the major focus of forest governance was trade and commerce by preventing the local rights and privileges of the forest dwellers. The tribal's have long been denied their rights over land because the settlement of rights had not been given to them. In fact the indigenous people have been known as the "encroacher" to forest areas declared as reserved, protected by the law. The Wildlife Protection Act of 1972 provided for creation of protected areas and wildlife habitats where again tribal's lost access to lands and livelihoods based on forests. The story was same as the settlements of rights were not carried out as a result tribal's became lands encroachers. During 1950s the policy of forests consolidation had started, the blow was given up when the Forest Conservation Act (FCA) of 1980, recorded the forests without settling local rights of the tribals .A very interesting fact to be noted is that countless forests were sealed off ,for revenue on one hand and prevent supporting livelihoods at the other hand even without actually existing. This unclear demarcation of forest and revenue lands gave a blow to the existing problem. The definition of forest given by Supreme Court elongated in denying rights of the tribal's and their dwelling into the forest .The final gust was given in May 2002 by MoEF with its circular to force to leave all 'encroachers' immediately.Nonetheless the Indian Government recognised the historical injustice' that was made to the 'the tribal forest dwellers of the country, their traditional rights over forests and forestland in June 2004, therefore with adequate changes and amendments, the Forest Rights Act was finally passed in December 2006 that promised to give up to 4 hectares of forestland to tribal's and traditional forest dwellers basing on recommendations of the Gram Sabha.[7]

Right to Forest

Jharkhand has very distinctive relationship with forest, hence the name Jharkhand mean "area of land covered with forests"[8] The national average of

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[6]Satyakam Joshi "Tribes, Land and Forests: Emerging Legal Implications with reference to PESA and FRA" ''Governance, Resources and Livelihoods of Adivasis in India: Implementation of PESA and FRA during 18-19 November, 2016 at NIRDPR, Hyderabad..

[7]Sanjoy Patnaik, Rights Against All Odds: How Sacrosanct is Tribal Forest Rights?

[8]Report on Land Governence Assement Framework, World Bank 2014.

forests cover is 23.81%[9] which is far less as compared to the total forest and tree cover in Jharkhand which about 32.48%. Jharkhand inherited the forest management practices and forest legislations from the parent state of Bihar, though quite a few legislations have been enacted after the formation of Jharkhand either by the Centre or the state itself. After independence, government through land reform measures wrested the ownership and control over these forests from the ex-landlords and princes. Gradually the rights of the subjects were regulated and ultimately restricted to annual right holder coupes over a limited period of time extending from a week to a month, in the said interest of the scientific management of these forests through induction and implementation of successive working plans of the forest divisions. A very peculiar aspect of forest governance in Jharkhand is the existence of *Mundari Khuntkattidar*[10] and *Bhuinhar* forests. Mondari khut kattidar means a mundari himself or a male members of his family who has acquired right to hold land in forest for cultivation.[11] It was under the sole discretion of village headmen, and is completely out of the control and interference of the forest department.The state government has the record of rights prepared by a revenue officers of the rights and obligation in any specified local area of raiyat.In Jharkhand an important issue is *Khatian* Part II[12] specifically acknowledges rights of *raiyats* with respect to forest produce and common land, but there are problems in free exercise of these rights as Indian Forest Act does not recognise rights guaranteed under *Khatihan* part II. Jharkhand practices inherited forest management and legislations from Bihar. Neither the Government of India nor the state itself has enacted substantial legislations in this regard .In Jharkhand the Classification of Forests can be on the basis of Status of Rights and can be categorised as following (i) Reserve Forest -Where Government has the sole control and villagers have no access to the forest,(ii) Protected Forest - Wherein the Rights of the villagers are recorded Khatian Part II ,(iii) Wild Life Protected Areas - Where the villagers have no rights,over theprotected land area(iv)Mundari Khuntkatti & Bhuinhari- Where sole control is under village headman and forest department has neither control nor access.

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[9]www.jharkhand.gov.in/hi/about-forest-department visited on April 24, 2018

[10]Peter Tete A Missionary Social Worker in India: J.B. Hoffmann, the Chota Nagpur Tenancy and TheCatholic Co operatives 1893-1928,Universita Gregorina Editrice Roma-1984

[11]Hand book on ChotaNagpur Tenancy Laws alongwith Customary Laws in Chotanagpur fourth edition ,Rajpal&company.

[12]Government maintains records of all land in *Khatihan* (also known as Records of Rights, ROR).

Table 2: Classification of forests in Jharkhand[13]

Protected Forests	*19185 Km²*
Unclassified	*33 Km²*
Very Dense	*2590 Sq.km.*
Moderately Dense	*9917 Sq.km*
Scrub Forest	*683 Sq.km*
Open Forest-	*10470 Sq.km*

Importance of Forest in India

Ancient India has always given special reverence been to the flora and fauna in Hindu theology. The Vedas, Puranas, Upanishads and many others scriptures laid importance of forests and wildlife. Rig Veda particularly highlights potentialities of nature in climate control, increase in the productivity human development with the symbiotic relationship with the nature. The Maurayan period is known to be most glorious as it laid importance to environmental protection. During this period we find detailed and perceptive legal provisions in Kautalaya's Arthashastra written between 321B.C. and 300 B.C.[14] Despite these attempts natural resources were considered to be inexhaustible hence conservation of natural resources was not given importance. The medieval India is known for the magnificent monuments, gardens, fruit orchards made by Moghul emperors but still there was a lack in the attempt to conserve natural resources. The British rule was totally indifferent to the conservation of the forest as there was fierce onslaught of the forests to meet the increasing demand of military purpose, local construction, supply of teak and sandal wood for the export to enlarge the revenue.

Analysis of the Forest Regulations in India

The Indian forest regulation in can be analyzed into two periods one is prior to independence and the other is the post- independence.

The pre –independence: It was in the year 1806 that the Britishers started exercising control over the forests to inquire into the availability of teak in the Malabar and Travancore. The 19th century of India saw a new beginning towards an organized forest management with the formulation of the forest policy and the legislation for the implementation of the same. The enactment of Forest Act,1865 gave the British Government the monopoly over the forest and by the expanded power of the state the forest were declared as "Reserve Forest" which were close to the people but penalties were imposed for the transgression of the act. The ulterior motive was timber production and revenue generation with complete denial of rights to indigenous people with respect to

[13]*(India State of Forest Report 2011- Jharkhand)*

[14]V k gupta , kautilyan Jurisprudence,(Delhi ,1987),pp. 155-156

the forests. The first forest policy came into existence in 1884 and to implement the same Forest Act of 1927 was enacted which acquired all forestland, village forest and other common property resources.

After independence, the land reform brought the forests under government control from the ex-landlords and declared them as "Protected Forest, the purpose was still the same that is to generate the revenue. The 1970's was an important milestone in forest conservation efforts. Forest Produce (Trade Regulation) Act, of 1984 consolidated the monopoly of trade in almost all forest produce in the hands of the State Govt. or FDC. It was for the first time that National Forest Policy of 1988 emphasized on two basic facts:

- First that the forests should not be treated as a source of revenue.
- Second the local village communities should actively participate in protection and growth of the forests, this can be initiated by giving them a major share in the accruals from the forests.

The government of Bihar[15] passed a resolution in 1990, placing the degraded portions of the forests under protection of Joint Forest Management Committees and thus ensuring first generation reform in JFM by giving the villages recorded rights over the forest[16] It is a form of partnerships involving the stake of the state itself, the department of forest and local communities. The idea is to guard the of forest wherewithal from illegal harvesting, fire and grazing. The JFM was intuitive in response to Chipko movement of the 1970s in the Himalaya[17] which dealt with conflicts over forests.

The intended objective of JFM was to ensure sustainable use of forests with equitable distribution of needs with environmental sustainability. The central premise of JFM is the stake that local women and men have on forests as well as sustainable forest management JFM was brainchild of the Indian National Forest Policy 1988, with an objective of people's participation in managing their local resources with respect to their basic forest-related 20needs. 'Participatory exclusion' of some groups on grounds of gender or caste has been pointed out by While Bina Agarwal (2001)[18],

But the policy failed in its intended objectives. Never the less the state introduced JFM resolution in 2001. The resolution was to elect the JFMCs by the *gram sabha*[19] of village which had the recorded rights over a particular forest and the indigenous people should be actively involved in the protection

[15]It is important to mention "Bihar" because the State of Jharkhand was not formed.

[16]JFM: Joint Forest Management.

[17]Guha , R. (2009) The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya, expanded edition, Delhi; Permanent Black.

[18]Agarwal, B. (2001) Participatory exclusions, community forestry and gender, World Development, 29 (10) 1623-1648.

[19]PESA 1996

and management of entire forest. The Forest Rights Act, 2006 was a laudable piece of Central legislation to do away the age old denial of land use rights of the forest dwellers, tribal or others, a significant cause for alienation of the forest dwellers from the forest management. The villagers still gather their domestic requirement of timber and firewood from the forest. The rights in the protected forests comprised within protected areas (wildlife) have been terminally suspended without any compensation or valid alternative.

One of the land mark judgment of Supreme Court's in the case Orissa Mining Corporation vs. Union of India and Ors 2013[20] prepared a number of elucidation about forest dwellers and the Forest Rights Act. The Court connected indigenous rights to the constitutional provisions for protection of STs and the FRA by giving an everlasting pledge to inhabit in the forests in symbiotic relationship with the entire ecosystem for generations. The enactment of FRA was not based upon property only rather the nature was of welfare protecting, the customary rights as well. Section 5 of the Act empowers gram sabha for the management and preservation of habitat from any form of caustic practice disturbing their cultural and natural heritage. Hence the Grama Sabha is intitled to protect the custom, usage, forms, practices and ceremonies and to safeguard and preserve the traditions and customs of the STs and other forest dwellers, their cultural identity, community resources.

Weaknesses

As recorded in Jharkhand the forests have limited rights of the users (right-holders) in Khatian Part II - such as collecting of fire wood and timber for domestic or agricultural wants, but in upshot only free access and grazing are protected in practice. The rights have been displaced in Wild life Sanctuaries and National Park, though in practice this expulsion is often practiced in 47ull measure. Fishery in wet lands within forests is not recognized as users' right.

It is estimated that approximately 75% of the sanctioned posts of forest guards and foresters are lying vacant, depriving the department of representation at the JFMC level which is a serious problem. The another issue that the provision of JFM resolution 2001 have not been suitably amended to assist Indian Forest Act, 1927 as well as Forest Account Code. And under Khatian part –II the community rights have not been so far legally recognized.The Transit Rules restrictions play demotivating role in social forestry as well as collection and trade of MFPs

Strengths

The state has recognized the role of Joint Forest Management and Village Forest Management they have to be activated and motivated. The state can amendments the required legislative and executive structures for the proper management of JFM. The Tribal cultural can play a important role in facilitating and motivating the organizations.

One of the exclusive example is *Rakshabandhan* Movement carried out by Mahadeo Mahto of Tatijharia in Hazaribag[21] which is giving a new dimension to the sustainable management and conservation of the forests.

Conclusion

Etymological meaning of forest is "out of the door" which is derived from latin word "foris."Therefore we may say that one who dwell in the forests since ancient time must have exclusive rights for the protection of their forest along with customary rights to, regenerate and develop the forest with respect to gainful employment. It is a well known fact that Jharkhand has a unique relationship with the forests because major area of the state is covered with the forests. Festivals like *Sarhul* and *Karma* is celebrate by the indigenous people to show their symbiotic associations with forests that they have , by worshipping of trees as a custom. Forests management and conservation program cannot succeed without the support of indigenous people therefore a holistic approach is required which focuses on the paradigm shift on FRA and JFM. For the state like Jharkhand what is important is amendment in Indian Forest Acts to remove the legal and procedural impediments for the successful implementation of JFM. There should be clear demarcation of responsibility of management and conservation of forest lands identified as reserved forests, protected forests, Wild life Sanctuaries and National Parks. Is also to be noted that a fresh survey is need of the hour to avoid difficulties .In *Khatian* Part II the rights of rural groups are clearly recognized for protected forests and is also well elaborated in the resolutions (of 1990 and 2001) of the government . But these rights are neither fairly exercised nor regulated in practice Therefore it needs to be streamlined and strengthen for revenue as recognized by Tenancy Laws A bigger role should be given to Forest Department to remove inefficiency, collision and callous attitude towards forests gathers, PESA should be implemented in good spirit. To, sum up there should be involvement of all the stages of planning and implementation of community-based program for the socio-economic development of the forest dwellers.

End Notes

1. Raiyat is primarily a person or members of his family or hired servants who has a right to hold the land for purpose of cultivating it, by or with the aid of the parents ; but does not include a Mundari kunt-kattidar.
2. The formation of Gramsabha is a part of decentralization in India. It is a constitutional body, which aims to promote democracy in participatory form to represent each and every section of the community and their needs to check and assess the developmental programmes carried on by Panchayat.

[21]The Telegraph october 2007.

3. In Jharkhand numerous rights of users can coexist particularly about forest and also on common lands without any legal impediment. In forests the rights to conservation and growth is with the government. PESA and Khatian Part II also recognised the villager rights of NTFP and their domestic forest - produce requirement but also of regulating their management. Nevertheless this array of rights is the only to some extent observed and appreciated in practice, in view of the fact that the forest management in practice remains the exclusive domain of the government .On common land also numerous rights can lawfully coexist, including the use of surface , underground or sub – soil mining rights, but at the same time exercise of these multiple rights is a singular vision.

CHAPTER 9

Tribals, Sanitation and Their Rights

Tribes in India

Tribal people form a major segment of the world population. They are found in every part of the world. "Primitive, 'Indigenous,' 'Aboriginal,' 'Native' etc are the different names of tribals in different parts of the country. In India tribes are called by different names such as Adivasi, Janjati, Anusuchit Janjati,Vanvasi etc..

8.6% of the Indian population constitute of 50 million Adivasis thus making it the largest tribal population in the world. The tribes in India form an integral part of the total population.

The tribes, despite regional variation, share many common traits like living in geographical isolation and being relatively more homogeneous and more self-contained than the non-tribal social groups. The Gonds, the Bhils, the Santhals, the Oraons and the Minas form the major tribes of India. The states of Madhya Pradesh, Orissa, Jharkhand, Maharashtra, Gujarat, Andhra Pradesh, West Bengal and the North Eastern Region have a larger concentration of tribal population. The tribal population as per 2011 census is 10.45 crore constituting 8.6% of the total population. 89.97% population lives in rural areas while only 10.03% in urban areas. Major population of tribes still live in the rural areas untouched and unaccessed with the modern lifestyle of the urban India. The tribal populations are socially and economically vulnerable. Their lifestyles, food habits, cultural practices, tradition are different from other group or community or rural neighbours. The tribal culture blooms in the isolated highlands and forests of India as they are closely associated to nature i.e. forest, sun, moon, and natural surrounding. This distinct lifestyle of tribes are identified as the tribal culture. It is tied up with their own language and heritage, love for freedom and self identity. Their close association with forest and nature also forms an integral part of their lifestyle. The tribal economy revolves around forest and forest products. They may not have adequate income but they know to survive in the limited resources.

Sl.No	Name of India / State / UT	Name of Scheduled Tribe (ST)	ST Population	Percentage of ST population in India
	INDIA	All Scheduled Tribes	104545716	8.6
1	Jammu Kashmir	Gujjar, Bakarwal, Other Tribes	1493299	11.9
2	Himachal Pradesh	Gaddi, Gujjar, Other Tribes	392126	5.7
3	Uttarakhand	Tharu, Jaunsari, Other Tribes	291903	2.9
4	Rajasthan	Mina, Bhil, Sahariya,Garasia,Other Tribes	9238534	13.5
5	Uttar Pradesh	Gond, Kharia,Nayak, Ojha,Pathari, Other Tribes	1134273	0-6
6	Bihar	Santal. Gond, Tharu, Oraon, Karwar, Other Tribes	1336573	1.3
7	Sikkim	Bhutia, Limboo, Other Tribes	206360	33.8
8	Arunachal Pradesh	Nyishi, Galo, Other Tribes	951821	66.8
9	Nagaland	Naga, Other Tribes	1710973	86.5
10	Manipur	Thadou, Tangkhul,Other Tribes	1167422	40.9
11	Mizoram	Mizo, Chakma, Other Tribes	9036115	94.4
12	Tripura	Tripuri, Riang, Other Tribes	1166813	31.8
13	Meghalaya	Khasi, Jaintia, Garo, Other Tribes	2555861	86.1
14	Assam	Boro, Miri, Karbi, Sonwal, Other Tribes	3884371	12.4
15	West Bengal	Santal, Oraon, Munda, Other Tribes	5296953	5.8
16	Jharkhand	Santal, Munda, Ho, Kharwar, Kolha, Other Tribes	8645042	26.2
17	Odisha	Khond, Gond, Santal, Kolha, Other Tribes	9590756	22.8
18	Chattisgarh	Gond, Kawar, Oraon, Bhatola, Bhimma, Other Tribes	7822902	30.6
19	Madhya Pradesh	Bhil, Kol, Gond, Agaria, Asur, Other Tribes	15316784	21.1
20	Gujarat	Bhil, Rathawa, Halpati, Dhodi, Other Tribes	89171714	14.8

Contd

Sl.No	Name of India / State / UT	Name of Scheduled Tribe (ST)	ST Population	Percentage of ST population in India
21	Daman and Diu	Dubla, Other Tribes	15363	6.3
22	D&H Haweli	Varli,Other Tribes	178564	52.0
23	Maharashtra	Bhil, Gond, Pawra, Dongar Koli,Other Tribes	10510213	9.4
24	Andhra Pradesh (including Telangana)	Lambadis, Koya, Banjara, Yerukulas, Other Tribes	5918073	7.0
25	Karnataka	Nayaka, Gond, Kolgha, Other Tribes	4248987	7.0
26	Goa	Gawda, Other Tribes	149275	10.2
27	Lakshadweep	Inhabitants of the Laccadive, Minicoy and Amindivi Islands, Other Tribes	61120	94.8
28	Kerala	Paniyan, Malai Arayan, Kurichiyan, Other Tribes	484839	1.5
29	Tamil Nadu	Malayali, Irular, Other Tribes	794697	1.1
30	Andaman and Nicobar Island	Nicobarese, Other Tribes	28530	7.5

Note: No Notified Scheduled Tribes in Punjab, Chandigarh, Haryana, NCT of Delhi and Puducherry as in 2011.

For the past 69 years the union and the state government have made effort to raise the level of tribal living at par with others citizens. They have made various laws, policies, schemes to uplift the tribal societies of India. Special provisions are made to empower the tribal group in the field of education and employment, to conserve their language and culture.

OPEN DEFECATION AND TRIBALS

40% of the global population(approx 2.5 billion people) lack access to basic sanitation. Sanitation is broadly defined, besides toilets, as management of human excreta, waste disposal and drainage, lack of which causes a substantial burden, especially on women, girls, children and poor people. Poor sanitation leads to water-borne diseases and spread of bacterial, viral and parasitic infections including diarrhoea, cholera, polio and hookworm. Children, including young girls, under 5 are affected the most as diarrhea is the second biggest killer of children worldwide and child mortality claims 6,00,000 under-5 lives every year. India is the topmost state in practising open defecation with 59.5% of the population preferring going out in open to defecate than to use designated toilets. And the tribals are the one which are mostly affected with the practise of open defecation.

Tribals have their own set of belief thoughts action behaviour which have been practised since ages. Some of these superstitious beliefs have been practised for so long that they have got entrenched in their behaviour even if they are wrong and not in the interest of human beings. Defecating in open too has been one such age old practices which appears to be the right behaviour for millions of tribal population across the world irrespective of nationality,social and income status. They continue with this unhealthy and shameful practice even today. The simple lifestyle is the major reason why tribal population still do not feel the urge to construct toilets and use it. Also, an individual from his very birth has to experience the ways in which some tribal lives from infancy to adulthood. He must adjust himself with the norms and values prescribed to him by the communities. Open defecation is one such practice. Tribal people prefer open fields to defecate. They feel claustrophobic in an enclosed area. Tribal since early childhood make their child also practice open defecation which later becomes a habit. Tribals especially men believe that constructing toilets within their house or nearby would pollute their house. As a result, even if toilets are constructed the men prefer to go out in open. It's more about an attitude they can't change their age-old practice of defecating in open. Toilet constructed are ended up being used as store room by the people. As the concept of maintaining and keeping toilets clean simply doesn't exist. The availability of the material to construct are either not available or are expensive for the people. Scarcity of water is also the reason people do not want to use toilets. With limited amount of water available (tribal living in interior forest areas), they

would not want to spend it on cleaning and maintaining toilets. When tribals are in the field/forest or when they go far away from their home, they have no option but to resort to open fields. Even after availability of public toilets they prefer to go to open fields as people find public toilets unclean and stingy to use. Many people in rural areas believe toilets to be unsafe and risky. The risk of their child falling into the pit or ground prevents them from using toilets. There is also a perception here that toilets are unhygienic, difficult to clean and emanate bad smell. Hence, they describe open defecation as more pleasant and comfortable experience. Some of the tribal population practice open defecation since it is an age old practice, passed from generation to generation.

Specific belief among tribal like men would not use the same toilet used by the female in the house ultimately result into open defecation as mostly there is a single toilet in the tribal houses. Affordability is also the major reason behind people opting for open defecation. Tribal find it difficult and expensive to construct toilets reason being their low economy. Although government have provided incentive to construct toilets they find it hard to maintain.

Household with Toilet Facility 2011 (In Percent)

	ST	All
Number of household with toilet facility within the premises	22.6	46.9
Number of household with no toilet facility within the premises	77.4	53.1
Open Defecation	74.7	59.5

What tribal do not realise is that having access to toilet not only violate the dignity and modesty of the women. But it also violate their other rights as well. Poor or no sanitation facility violate their educational rights. Their health is also at risk. More people in this world die of open defecation than of war. Children suffer more than anyone else due to open defecation. With poor education and poor health they do not get enough opportunity in employment. This has become a vicious circle where one aspect leads to another.

TRIBAL WOMEN AND DIGNITY

Empowerment of tribal women does not mean only economic liberty but also access to other aspect such as dignified life, good health, education, active participation in decision making etc. The term dignity signifies that 'A being has an innate right to respect and ethical treatment.' Article 1 of UDHR (Universal Declaration of Human Rights) says "All human beings are born free and equal in dignity and rights." Even the Indian Constitution guarantees its citizen Right to Dignity (Article 21). Often violation of dignity is associated with rape, sexual assault which women faces. But it is als open defecation (which is very common in developing countries like India) which also violate their dignity. Sanitation is an integral biological need of human life, and its proper access is related to

respect and dignity for those in need. Men feel free to relieve themselves wherever the feel to. But it is women who suffer a lot due to lack of toilet facility.. Women, the silent sufferers, functions under rigid hierarchies. They learned to curb their freedom and adjust themselves accordingly. They suppress their needs and be in the mode of self-denial. It is this self denial that women never bothered the need to have toilets. Women for many years neglected this aspect and silently suffered a lot. Even if they demanded for toilet they were unheard and ignored.

Women feel constrained to relieve themselves during daytime with the fear of losing their privacy & dignity. Hence, they prefer to control their nature's call and relieve themselves only before dawn and after dusk**.** Fear of being exposed to physical attacks like snake bite, insect bites etc. make them more vulnerable to diseases**.** Once a women is affected by diseases it not only risks women's health but also of her family members. The practices of open defecation not only challenge women's dignity and health but it also leads to increase in the crime rate. Silent role of women in the open field have increased cases such as sexual harassment, rape, physical attacks, kidnapping etc. According to the reports maximum crime could have been avoided if women have used toilets, and not gone out in open. Women are considered impure during menstruation, a biological process experienced by women almost every month. They are showcased as impure person when they go out in open. Going for toilets outside when menstruating pollutes the environment, and risks the health of the people as it is not disposed properly.

Open defecation is one of the major reason behind the increase in crime rate among women in India. "When we step out of the house we are scared," Devi says. "And we have to go in the mornings, in the evenings, and when we cannot stop ourselves, at times we go in the afternoons as well. And there are no bathrooms. We don't have any kind of facility. We have to go out." Others complained of harassment in the fields, thus they fear for their lives performing the simplest bodily function. Once having access to toilets, they no longer have to defecate in the open, suffer the indignity of physical and verbal abuse when relieving themselves. Crime like sexual harassment and rape will also reduce. Although tribal women have off lately realised the need of toilet but very few have fought and built the same. There have been instances where tribal women have come forward and fight against the fact that women in rural areas demand mobile phones, not toilets. This was vigorously denied by a 20-year-old tribal woman from Madhya Pradesh Anita Narre. "A toilet is more significant in the life of a woman than a mobile because the former gives them dignity", she said. Anita Narre grabbed the international headlines at the beginning of the year when she was awarded for leading a "sanitation revolution". Two days after her marriage in 2011 she left her in-laws house and refused to return until

they had built a toilet. Today would-be-brides in villages across India are taking the courage to demand toilets in their prospective husbands' houses and even going to the extent of returning to their parents' house if there is no toilet in the new house.

At times the poor economic condition deters tribal women to construct toilets at home. As a result they have to go out in open or in public toilets is time consuming as they have to stand in queue for hours. This time could have been used to generate income or look after family or children. Women do pity jobs and earn their living either monthly or are daily wage earner. Tribal women work hard to meet all ends. But due to poor sanitation their working hours are reduced which not only reduce their income but also cripples personal and family development. Poor sanitation results in women living in poor health, generating less income, have shorter lives, save and invest less. Tribal women are poor educated, lives in poverty. As a result they are unable to send their child to school. And also find difficult to raise and cure sickly children. Their illiteracy, poverty, struggle to meet all their needs draws away their attention from the need of constructing toilets.

With majority of people especially women defecating in open fields and living in an unhealthy and unclean surroundings due to lack of access to safe water and sanitation, India cannot achieve real development. Women being at the center of hygiene for all the members of family, children, men, and elderly people, it is important that they live a healthy life. As healthy women leads to healthy family which in turn leads to healthy society. Improved sanitation facilities enhance the health of women but also the health of the entire family.

EDUCATION AMONG TRIBES

Education is must for the overall development of the individuals. It also helps them to improve their social and economic condition. Hence it becomes even more important for Tribals to educate themselves. As development of India can be achieved only with the inclusive growth of tribal population in the country.

In the past few decade India has made significant progress in its education system, but the literacy of Schedule Tribes are still a matter of concern even after so many years of independence. Despite the fact that large section of central funded programs are related to the single sector of Tribal Education. Indian constitution even guarantee with special provision for tribals in the field of education under article 15(4).

Comparative Literacy Rates of STs and Total Population (In Percentage)

Category/Census India	2001	2011
Total Population	64.84	72.99
Schedule Tribes	47.10	58.96
Gap	18.28	14.03

One of the reasons for the backwardness in education among tribals was lack of facilities and support to the children. Although efforts are being made to implement the various schemes on education and increase access to the same through provision of infrastructure Vocational Training Centres are run to maximise retention of ST students within the various stages of school education. It also aims to promote higher education by providing monetary incentives in the form of scholarships such as Pre Matric Scholarship, Post Matric Scholarship, Scholarship for Top Class Education, National Fellowship and National Overseas Scholarship for ST students. But the fact is that the schemes are not known to the tribal students or either not reached to them.

Scheme of Pre Matric Scholarship for needy Scheduled Tribe children studying in classes IX and X was introduced with effect from 1.7.2012 It has the twin objectives of supporting parents of Scheduled Tribe students for education of their wards studying in classes IX and X so that the incidence of drop out, especially in transition from the elementary to secondary and during secondary stage of education is minimized, and to improve participation of ST students in classes IX and X of Pre-Matric stage, so that they perform well and have a better chance of progressing to Post-Matric stages of education.

Comparative Dropout Rate- 2011(In Percent)

Class	Boys		Girls		Total		
	ST	All	ST	All	ST	All	Gap
Class 1-5	37.3	28.7	33.9	25.1	35.6	27	8.6
Class 1-8	54.7	40.3	55.4	41	55	40.6	14.4
Class 1-10	70.6	64.4	71.3	47.9	70.9	49.3	21.6

- Apart from poverty, other reason such as lack of toilets facility in school, child marriage, helping to generate income for the family also plays a major role in increase in dropout rate of tribal students. Lack of toilets in school has an adverse effect more on girls than in boys. As a result of which the dropout rate in girls is more than boys. There is a sharp increase in the dropout rate among both tribal boys and girls, as their education level increase. Clearly observed the gap in the dropout rate between Schedule Tribes and others increases with the increase in the class.

Schemes and policies were made to decrease the dropout rate. Even after implementing various schemes tribals are still lacking behind in education as the very basic necessity of having toilets at school was not even thought about. People while building schools did not give priority to build toilets and even though toilets were build it was poorly constructed. In India, on an average children spend 6 to 8 hours in school. Therefore it is quite impossible to control the urge to either pee or poo in school for such long hours. Hence it is very important that school have a proper sanitation facility(separately for boys and girls). School is an institution where children can learn about the basic hygiene. And in turn can motivate their families follow basic hygiene. But sanitation facilities in school across the country is not even at satisfactory level. Annual Status of Education Report suggests that 46 percent of schools in India do not have functional toilets specially for girls. This led to increase in dropout rate especially among girls. As the girls found it difficult to go out in open. The matter worsen when they hit puberty. Not having access to toilet make them vulnerable, affect their dignity and self esteem. Girls remain absent with an average of 50 days of school each year, during menstrual cycle. Studies show that not having access to proper safe and private sanitation decreases the attendance percentage among girl learners resulting in their dropping out of schools altogether.

HEALTH AND OPEN DEFECATION

Health is a basic human right of all the human beings. Article 25 of UDHR "Everyone has the right to a standard of living adequate for the health and well-being of himself and the family." Standard of living includes food, clothing, medical, housing. Apart from having all these basic amenities, a toilet within a house is also important for everyone. As access to safe, clean toilets brings benefits to the person's health.

It is very essential to have the data regarding health of the Indian Population to frame the policies and programs. As the healthy people forms healthy nation. Ministry of Health and Family welfare obtains child mortality, maternal and child health, reproductive health, nutritional value and quality of health. It shows a major concern towards the tribal people as health of the tribal population is very poor than any other group.

Tribals suffers from very poor conditions in terms of hygiene, poverty, and lack of safe drinking water, resulting in major health problems such as diarrhoea, malaria, filarial, TB, anaemia, and others. Poor child birth and nutrition standards lead to high Infant Mortality Rate and Maternal Mortality Rate. Open defecation, lack of sanitary latrines is the major reason for the poor health of tribal population. Lack of sanitation places additional burden on women and children.

In the absence of appropriate toilet facilities, women often suffer from lack of privacy, their dignity being violated, snake, insect bites, lewd comment

passed by the men, sexual harassment. They need to walk long distances to find a suitable place for defecation as a result of which they have to hold on for longer time which put their health at risk. Most of the time they have to wait till early morning or night before venturing out in open which causes health problems such as reproductive tract infections, skin infections and urinary tract infections. They are prone to harassment,sexual violence, rape. Problems increases during menstruation and pregnancy. The menstruation, pregnancy and the postnatal period become more troublesome if women do not use the designated toilet. According to UN figure India ranks first in maternal mortality rate with 212 per One Lakh child birth. The aim of MDG was to reduce MMR by 109 per lakh of live birth by 2015 which is surely not achieved till now. This can be reduced with the use of proper toilet facility.

It is observed that women using toilets live a healthy lifestyle than women not using it. Attending nature's call in open during menstruation brings shame, also invites various diseases and risks health of women. Even during pregnancy going out and relieving risks the health of the mother and also the life of unborn. While women using designated toilets are less vulnerable, free from diseases spread from open defecation. Holding oneself for too long to relieve also affects the health of a person especially women. Thus having toilet at home,women do not have to control themselves for too long to relieve themselves and not affecting their health. It is very important that women live a healthy life. A healthy woman brings a healthy family and ultimately a healthy society resulting in a healthy nation.

Health Indicators-2011 (In Percent)

	ST	ALL
Infant Mortality Rate	62.1	57.0
Child Mortality Rate	35.8	18.4
Under 5 Mortality Rate	95.7	74.3

Children are the main victims of diarrhoea and other faecal-oral diseases. Children are the most severe victims of water borne diseases resulting in high mortality rate and morbidity. Sanitation is likely to be particularly effective in controlling worm infections in children. It is important that children are taught to use designated toilets during their early childhood. Once the habit is formed it is difficult to change. Child- friendly toilets and the development of effective school sanitation programs are important and popular strategies for promoting the demand for sanitation facilities and enhancing their impact.

Apart from creating health issues, lack of sanitation also causes loss in economy. With the use of sanitation and access to proper toilet there could be an annual saving of Rs 12 billion.

ECONOMY AND OPEN DEFECATION

The government and social reformers have shown major concern towards the development of tribal population in India..Tribals economy is dependent on forest and forest products. The major bulk of the tribal population work as agricultural laborers. If not agriculture or forest they do pity jobs to earn their livelihood.

Employment of Tribals in India-2011 (In Percent)

	Self Employed in					
	Cultivation	Livestock Farming	Other Agricultural Activities	Non- Agricultural Enterprise	Wages/ Salaried Employment	Others
ST	50.95	0.75	3.70	5.54	32.90	6.17

Major tribal population in India still lives in rural areas. They live in inaccessible areas where their source of income is dependant mainly on agriculture, forest and forest products. With minimum earning they find it difficult to meet their basic requirements. Therefore, even if tribal wish to construct toilet their economy do not support it. Also the financial aid provided to the people to construct toilet do not reach them due to complex structure. They find it difficult to run around for funds as it would affect their daily wage earning on which they survive..

Access to proper toilets results in less illness. Tribals stays healthy thus number of working days lost are avoided with respect to formal or informal employment other productive activities in the household or school attendance. The annual global value of adult days gained could be minimum of US$210 million and could be up to almost US$ 750 million. In India an annual loss of 180 million man-days can be saved for the economy owing to reduced sanitation-related diseases.

With the closer location of sanitation facilities tribals do not have to go out in field as is the traditional practice hence time is saved. This time saving translates into increased production, higher school attendance and more leisure time. The annual value of these time savings, spread over the entire population would range between US$12 billion and US$64 billion.

THE PROBLEM

Major population of tribes reside in interior of the rural areas unassessed and untouched with the urban lifestyle. Hence it becomes difficult for the government to reach them and vice versa. Tribals are known for their distinct culture and tradition. It is also their culture that forbid them to have toilet at home as they consider it impure. The idea of having kitchen and toilet at the same place is simply unacceptable for them. Hence it is not only the physical

problems like lack of funds, space etc. that government has to deal with but the mindset of the people as well. It is quite a task to realise tribal population the benefits of using toilet. Women who are the silent sufferers are often restricted by the society to take decision for themselves.. They need to struggle a lot to fulfill even their basic needs. So constructing toilet is out of the league. Even if they fight for their rights they are often unheard. Men do not feel the urge to have toilet as they can go out in open whenever there's a nature call. They do not realise what women go through every time defecating in open. Toilet facilities which meet women's physical and psychological demands can be readily achieved when even women actively participate in the process of designing and implementing the program and policies. Women, after a lot of struggle, if they succeed in persuading men to have a toilet within their household other problems crop up. At times the socio-economic conditions of the family do not allow them to construct toilets within their household. Availability of space to construct toilet is also one of the major issue. Even if they carve out the place in their house, the funds provided by the government to construct toilets are not sufficient. People also do not want to take loan to construct a toilet. Once the funds are granted to the family to construct toilet, they are often misused by the male members of the family. At times, the toilets constructed are often used as store room by the family members. It is also observed that even if toilets are constructed and used, it may be shut down after a while due to non-availability of water. As they may find hard to clean toilet every other day. As a result they may prefer to go out in open again than to use a dirty toilet.

But apart from privacy and dignity, there are other benefits of having a toilet which are easy to identify and measure i.e better health, higher levels of education, increased wealth and productivity for nations and individuals and a cleaner environment. There have been instances where tribal women and girls have come forward and demanded for their basic right i.e. to construct a private toilet for themselves. As soon they realised how open defecation is a vicious circle and is affecting their life, dignity, health, education and economy.

SWACHH BHARAT ABHIYAN

Swachh Bharat Mission is one of the flagship program of the government, which has received all attention from media & society. Cleanliness has never been on the center stage ever before for India laden with problem associated with poverty, hunger, unemployment etc. A clean India movement which is popularly known as ***'Swachh Bharat Abhiyan'*** is one of the great initiative taken by Modi Government. The Government of India on 2nd October 2014 from Rajghat, New Delhi, on the 145th birth anniversary of the Mohandas Karamchand Gandhi (Father of the Nation) started such great movement. The main aim of Government behind such step is to make India free from open

defecation till 2019, the 150th birth anniversary of Mahatma Gandhi. On the day of launching this movement the Prime Minister Narendra Modi states that the pursuit of cleanliness can be an economic activity, contributing to Gross Domestic Product growth, reduction in health care costs, and a source of employment.

Cleanliness for the first time became a national issue. With ministers, officers taking broom into their hands, advertisements in media etc has spread awareness among general public. it is itself a welcome change to recognize importance of cleanliness. The use of media and campaigns like "Darwaza Bandh", 'Jaha Soch Waha Shauchalaya' have led to behavior change and public awareness regarding sanitation. In these 3 years due to SBM the rural sanitation coverage have gone up from 39% to 67%. One of the key ingredient of Swachh Bharat mission was to discourage open defecation & building toilets, this has been quite successful as making functional toilets was made compulsory for contesting panchayat elections in Haryana and Rajasthan and many other states, which shows the determination to achieve the dream.

But only building toilets will not solve the problem until an integrated plan is formulated to have better sewage system & modern waste disposal techniques etc. It has been observed that finance funded to eradicate toilet are mostly used to construct toilet and very little towards information, education, and communication.

A large population of people despite having access to toilet still prefer to go out in open to attend nature's call. So, apart from constructing toilet, it is very important to motivate people to use the toilet. Hence a part of funds must be spend towards motivating people, as a motivated person will surely construct or use toilet despite any problem. Tribals, even if they have toilets still prefer to defecate in open. Thus, Swachh Bharat Abhiyan works in two steps first to motivate behavior change and second to build and use toilets. To convince or motivate community/people to build toilets, trained facilitator meet the villagers/ slum to discuss the implications of open defecation. Through various means like seminar, street plays etc they try and convince people to use toilet. Once convinced they discuss with the villagers the place best suitable to construct toilets in an affordable price. Further they are taught how to maintain the toilets. Many successful villages used social pressure (by imposing fine, giving punishment) thus emphasizing on the importance of toilets and their pride and dignity which deter them to practice open defecation all over again.

A motivational incentive of Rs 12,000 is provided to the people who construct toilets under the Swachh Bharat Abhiyan scheme. Swachh Bharat Abhiyan National campaign has doubled its efforts to fulfill Mahatma Gandhi's Dream of Clean India by 2019. Sanitation for All. SBM is the project which primarily focuses on elimination of open defecation in the nation by 2019. If we

analyse this great initiative of Government then we find out that after more than two years of launching, this movement is still in its infancy. But it is also fact that it got off the right start. It is true the result will not come immediately, but it is assured that if people support this campaign then it will definitely get success.

SCHEMES AND POLICIES

Advertisements on TV, radio, newspapers, paintings, and hoardings on the wall of the roads, various schemes and policies and working of various NGOs, organizing street plays etc. surely have left an impact on tribal people. Various schemes launched by the Indian government has motivated people to construct and use toilets. Schemes like 'jaha soch waha shauchalaya', 'no toilet no bride', 'toilet first temple later' have somewhere left an impact on the people. This can be observed by the fact that people who were earlier ignorant about this topic have now started talking and working towards it. A very interesting concept of 'Gandhigiri' inspired from a movie was initiated in which Municipal Corporation gave red roses to the people to who defecate in open so that they realize the importance of having a toilet. Another example where women would blow horn before dawn and after dusk to make other women realize the importance of having toilets.

In tribal areas, market plays the powerful channel of communication in the tribal region. The weekly market has obtained a place in the social organization of the tribal people. Hence it is the best place of meeting. Therefore, any announcement of community interest broadcast here will spread all over the area immediately. Hence to spread awareness on use of toilets among tribal their weekly market seems to be the right place.

But the decision-making power is firmly in the hands of people within each village, district, urban settlement of India. Though late, communities have now, through better sanitation facilities, have chosen to end open defecation, and improve their lives. The tribes of India is now moulding itself slowly but steadily, to find its niche in the national mainstream of culture. Economic development of tribal population, without cultural oppression or giving offence to their heritage or ethos will remain a challenging task.

CONCLUSION

Since Independence, India has made rapid stride in almost every sphere. But it is hard to believe that this nuclear power country, failed to provide the basic facility to the common people which is adequate sanitation facility. India is a country with largest number of people defecating in open in the world. It took 50-60 years for the independent nation understand the importance of adequate sanitation facility. Even the countries like Bhutan Bangladesh have proper sanitation facility than India. There are two basic problems. Firstly people

have been practising open defecation since ages. Although with modernization, large population of people, off lately started using designated toilet. But tribals were still didn't realise the need of having toilet. Tribal people mostly resides in interior of the rural areas. And they are of the opinion that having toilets at home is unhygienic. This attitude of people towards not having toilets at home is one of the major reason India is striving hard to eradicate open defecation. Secondly, the socio- economic condition of the people do not allow them to construct toilet and thus using it. This is when SBM comes into picture, where they provide financial assistance to the people who wish to construct and use toilet.

There have been various instances where the funds have been misused by the people. They seek for funds and in the name of constructing toilet they misuse the fund and spend it in drinking and gambling. It is rightly said that using toilet is more of an attitude than affordability. It is observed that major of the tribal population living in rural areas or urban slums have access to Mobiles, Television, and Motorbikes etc. They look at it as a basic necessity to live normal and decent life. But they do not find toilet as a basic necessity. If tribes can learn to operate ATMs, mobiles, and internet etc., it's equally important that they learn to sanitize their behavior particularly with using toilets.

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CHAPTER 10

Inequalities in the Name of Development

ABSTRACT

Development of tribal is very complicated issue for the government as it need full attention from place to place and state to state. However, the problem is that, the government only see the development of tribal issue is only affected due to poverty and most of the programmes and policies implemented either to remove poverty or for the economic development. But the complex is that, there are other factors are also, in which tribal seeking government help to protect and preserve their ethnic identity, language, culture, norms and practices or belief etc. Only economic development would be utterly inadequate as they are face several problem to protect their identity from external influences (dikus and government). Since Independence, development of tribal people has always been an major concern in India. For this, the Indian Government has taken up many challenging tasks by implementing related programmes, policies and provisions from the Constitution. These initiatives have been carried out with an aim to start working from the ground level so as to provide equality and social justice to the underprivileged or scheduled tribe people. The most important rationale and object of such initiatives are to ameliorate their socio-economic conditions. That said, even after 70 year of India's independence, the conditions of the tribal groups, in most cases, have not seen visible improvements and still constitute a weaker section of the Indian society. This could be seen from ecological, economy and educational angles. It is very unfortunate that the adopted policies, programmes and plans have not seeped deep into these underprivileged sections of the society as they are often squandered by the top echelons of the concerned authorities. For instance, in every five year plan, government of India has made so many policies and programmes to

eliminate poverty, illiteracy, equality, unemployment, prostitution, trafficking, child labour, bonded labour, untouchability, violence in domestic help, naxalism, land acquisition etc., but all these have remained as mere words on paper without any substantial outcome. With these aspects in mind, I would to analyze all the major policies, programme and constitutional provisions which have been implemented from time to time for the upkeep of the tribal people in India.

Furthermore, in this paper, I would like to highlight and discuss the reasons behind the failure of the aforementioned programmes, policies and strategies. As a result of the improper implementation of the mentioned policies, schemes and programmes, the tribal citizens of India have been practically deprived of many civic facilities and are isolated from the modern and civilized way of living since so many decades.

Keywords- Inequalities, Tribal Rights, India, Displacement, health, Illiteracy, Land Alienation

Effort for the tribal development had begun in the British era, but at the same time, they faced tribal insurgency and unrest. Tribal insurgency was forcibly suppressed by British administration using armed force. Realizing that there is a need to deal with the tribal affairs separately, they created separate administrative system in tribal areas. The tribal people generally living in the hills and forests area or near about river, they have their own language, traditions and culture which is quit varies from the general people of India. They are economically and socially backward community and till the independence of India remained isolated from the main stream of national life.[1] Since Independence, development of tribal people has always been a major concern in India. For their socio-economic backwardness framers of the Indian constitution made special provisions for the development of the tribal people. Similarly, several laws have been passed, implemented programme and policies and also separate administrative system has created to encourage tribal people to come at mainstream. These initiatives have been carried out with an aim to start work from the ground level so as to provide equality and social justice to the underprivileged or scheduled tribe people.

Tribal in India

The word 'tribes' is popularly known as 'Adivasi' which itself denotes as a group of people dependent on land as their livelihood with their distinct culture, religion, customs, traditions, morals and ethnicity, etc. Adivasi always brings a picture of 'half –naked women, men, children' with arrows and spears in hand,

[1]Thakur, D.N. and Thakur, D. (2009), Tribal Law and Administration: Tribal Life in India (ed.), Delhi: Deep and Deep Publications Pvt. Ltd.

bearing feather in hair, speaking alien languages and often commonly refer as people with characteristics of cannibalism, barbaric and savagery .However, after visiting their villages and tribes anyone can be quite amazed to see their unimaginable bonding to mother nature, peace-loving attitude, equitable norms and ways of lives. In the era of globalization and a global society were interconnectedness is undeniable to any mankind, there are certain people who believes that bonding to nature with its traditional values, customs, beliefs gives them more peace in their own world. They are popularly found in the areas of high latitude mountains, dense forests, deserts with little vegetation, islands whichever brings them more close to nature..

They were given lower wages by working on plantation areas of Tea cultivation in N.E states. In the recent days, there has been rising violations either socially, mentally, economically, emotionally in the lives of 'Adivasi' due to various reasons arising now -a–days. As a part of nature they are too entitled to share the same rights as Human Being like other citizens of any nations. From the very early stages, there has been many cases of violations of Fundamental Rights of the Tribes and in this manner the states/nations are bound to come as a rescue to those citizens of their nations. The Scheduled Tribes of India constitute approx. 8.2% of India's population which were largely neglected group. Tribals account for less than 10% of the population and have accounted for over 40% of all project displacement in India since Independence. Due to displacement in the name of development numerous issues arising namely violations of human rights, fundamental rights, displacement, poverty, identity crisis, govt. developmental projects, sanitation, education, unemployment, trafficking, etc and large no. of policies made by government to tackle the burning issues of the country. According to some official figures and statistics of the year 1994, about 15.5 million people were internally displaced in India and the government acknowledges that around 11.5 million people need to be rehabilitated.

The court has also cautioned against government and businesses being complicit in human rights violations. Examples abound in Chhattisgarh's iron-ore rich south, and coal-rich north. Examples also abound in Jharkhand, Odisha, Madhya Pradesh, Andhra Pradesh, Telangana, among other states, which have harassed, attacked, displaced without consent, provided scant rehabilitation—and continue to strong-arm tribal communities for mineral and project development, bypassing or attempting to bypass a community's denial to projects.[2]

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[2]Chakravarti Sudeep (2016), Tribes at the altar of democracy, available at URL:https://www.livemint.com/Opinion/GSJSF0q5JdyF6YrDoa25EM/Tribes-at-the-altar-of-democracy.html

The Tribals/Adivasi was blamed for their traditional socio-economic and cultural system and an hindrance towards development with backward, orthodox, superstitious attitude. Hence, more and more emphasis were put forward to excel them in the false perception on fields of development, this leads to the displacement of the tribal land areas with huge cost being paid to the destruction of the natural ecology and environment. As a tribal woman said, about the difficulty of fetching water in an area where it used to be abundant, 'Everything is so dry now. Our streams and waterfalls have disappeared. What have they done to them?'.[3]

With this regards the Jawaharlal Nehru introduced his vision for the development of tribal, so the tribal people can claim their rights over land and forests. Nehru's five principles which also known as *Panchsheel* described that

> *"development in various ways there has to be, such as communications, medical facilities, education and better agriculture. These avenues of development should however be pursued within the broad framework of the following five fundamental principles"*[4].

In which people should develop their own within their limitation without imposing anything on them and should encourage them to maintain their traditional arts and culture. Including this, tribal rights over land and forest should be respected; they will allow using the forest for their survival and for the economic development. And provide training program to work for administration and development. And they should avoid any programme and policies which introduce outsiders (*dikus*) to interfere in the tribal area. Including this, the administration in tribal areas will be in their hand only, not administer by the others. Any implementation programme and schemes related to tribal will provide sovereignty over their matter and to build social and cultural relations. And we should not judge results by statistics or by the amount of money spent on them but to provide quality of life with basic amenities.

Struggle of tribal and marginalized group started in colonial time. Tribal were deprived from their rights over traditional land, forest and river. The Indian Forest Act of 1927 introduced set of principles, which implied that any property which does not have legal document or legal ownership can be appropriated by the government. After that the government of India Act, 1935, enacted by the British Parliament created provincial legislature. Hereafter, the forests subject was included in the provincial list under this Act. But all the laws regarding

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[3]Padel, Felix and Das, ýSamarendra (2010), Out of this Earth: East India Adivasi and the Aluminium Cartel,Telangana: Orient BlackSwan, pp 400.

[4]Human Development Report (2006), Arunachal Pardesh, Department of Planning, Government of Arunachal Pardesh, Accessed on 12 March 2004, [online web], Available on URL: http://planningcommission.nic.in/plans/stateplan/sdr_pdf/shdr_ap05.pdf

regulation of forest remain the same as in the Forest Act, 1927. After Independence, among the tribals, activist working for tribal, experts expected that, the free government of India would recognize the tribal rights over forests and get rid of the exploitation, which was earlier practiced in the name of 'forest administration'. But the Government of India disappointed tribals by adopting the same old basic laws and principles which was lay down by the British administration. Tribal did not get back their colonial rights over forests.[5] Tribal rights over forest and their ancestral land even more restricted time to time.

The land acquisition act of 1894 made with the purpose of facilitating government accession of privately held land for public and private ownership. The word 'public purpose' defined in the act, refers as acquisition of land areas for putting educational institutions i.e housing, health apart from projects for rural planning and sites formation. The British government enacted Land Acquisition Act of 1894 which leads to the acquisition of people from their land areas and heads towards the process of displacement. After independence of 1947,the displacement of Adivasi continued to follow the same colonial law of 1894 after the departure of British causing social injustice, isolation and feeling of social neglect.

Under the Land Acquisition Act 1894, the land owner is entitled to the compensation on the basis of using the market value of land but based on preliminary notice with no absolute consideration of increasing land rates in future. It is usually decided by collector but interference of courts has been banned and no independent judicial body has been appointed for this purpose. The compensation fixed for land were not having any surety towards time limit and redressal of the grievances and any objection were having acquisition of the land areas. Under Section -4 of the Act, the government made public notification of intention to take over the land for public purpose. It is used usually by housing schemes, roads, playground, offices and factories benefiting only private and government stakeholders. Under the existing legislation, even private corporation are granted right to acquire land ender certain sections.

Causes and Consequences of Land Displacement

Environmental Impact–The current era of global climate change has been changing at every passing stage towards more destruction. The tribal areas were shifted from tribal to non – tribal areas or private enterprises for various developmental projects i.e industries. Mining leads to deforestation in order to set up developmental projects causing pollution and environmental degradation of the Earth. The ecological and environmental factors were largely

[5]Ghate, Rucha Suresh (1992), Forest Policy and Tribal Development: A Study of Maharashtra, New Delhi: Concept Publishing Company.

ignored leads to detachment, exclusion of tribal from and land areas. The tribals formed more than two-third of the tribal population displacing owing to activities in the forest.

Lack of employment– The agricultural lands had immediate impact on employment oppourtunity for members related and linked to farming activities. The land areas also leads to shift of ownership rights as benami land transfer. With the rate of decline of landownership in a village, landowning farmers lose income due to fall I agricultural output. The farm labour work engaging witness reduction of income owning to fall in employment.The modern manufacturing and other economic activities are skilled based rather than labour intensive and can absorb only limited no. of unskilled labour.

Health Insecurity - The contamination of environment leads to deterioration of public health. The consumption and inhaling of contaminated air and water deteriorated the health of large section of Adivasi causing various types of deformity having no urgent and quick solution. The issues of malnutrition, etc are common among tribals. Resettlement plans ensure access to health care conditions but fails to address the core issues. The reported health problems were regarding viral infection, genetic disorder, fever, malaria, goiter were worse affected by women's and children.

Loss of Market – In the era of Liberalization, Privatization and Globalisation, various goods and services were globally available with reduction in the sale of indigenous products. The displacement of people leads to the loss of their potential market areas nearby reducing their access to trade and ultimately face the issue of unemployment. No sufficient suitable land for land is been provided. The economic backbone of the tribals has been lost and disrupted leading to the involvement in the vicious cycle of extreme poverty, indebtness and loss of lives, etc.

Gender Insecurity–With the cause of any type of possible dispute/ problems/issues, the women and children were worst affected involved in various type of selling and buying in various country with heavy demand of women and children for prostitution, child labour, organs trade, smuggling, forced marriage, bonded labour, etc. The increase in various type of unsocial activities has been rising affected mostly by poor sections of society.

Naxalism–The effects of land displacement leads to the growth of naxal operation and the most prone regions were referred as 'Red Corridor' in various states of Indian territory. 'A dangerous shift is the land acquisition that has taken place recently in model of evacuation of the villages by Salma Judum type 'projects' displacing thousands of tribals from their homeland under pretext of countering Naxalism'.[5] Naxalism were intially started as a movement against the land ownership of zamindars. Slowly, the goal/objectives has been changing significantly with more concentration towards causing violation/conflict

killing of government officials as a result of government policy and their isolation with the existing system. The naxalism movement were mainly concentrated in the areas of Jharkhand, Orissa, Chattisgarh with large tribal population with their own goal and motto completely different from contemporary policy and programmes.

Marginalization –The report of Mahapatra (1998) states that displaced people suffers tremendously, an example of 'Budolika' of Orissa tribe states that the people who were displaced were not respected among the community, daughter and sons from such family are not married leading to various psychological and issues and resettlement problems, their resettlement, standard of living has largely been affected in a worst scenario with no possible solution towards the grievances redressal of the issues.

Food Insecurity – Adivasi being the greatest victims of displacement faces the risk of undernourishment and food insecurity due to inadequate settlement. During their relocation calamity, loss of land due to projects, leads to sudden drop in the food crops availability and income ratio. Hunger and undernourishment became a long issue of Adivasi facing the risk of mortality rate and reduction of population day to day among the tribes.

Violating Human Rights – The worst affected victims in the history were commonly tribals around the world. Their voices were not heard facing the arbitrary arrest, social exclusion, punishment, violation, etc by no possible solution to the allocation of adequate financial resources disbursement and relief. The cash compensation for lost assets was not effective and adequate to solve their long term misery involved in the grim situation of loss of life and property.

Recently CPI national secretary K Narayana has alleged that the TRS government depriving tribal people of their legal rights over forest lands and trying to evict them from their traditional habitat in the name of 'Haritha Haram', an afforestation programme. [6] Including this, Chhattisgarh government denied tribal rights over forest in Ghatbarra village of Surguja district to facilitate coal mining of Prasa East and Kete Besan coal block. "The block has been allocated to Rajasthan Vidyut Utpadan Nigam Limited (RVUNL) and Adani Minerals Private Limited is the mine developer cum operator (MDO). The latter is a 100% subsidiary of Adani Enterprises Limited and RVUNL is Rajasthan government's company." With this government order it is clear message for the tribal community that government is not favour of tribal people.[7] Similarly in

[6]The Hindu (2017), Tribals deprived of their legal rights over forest lands: CPI, available on URL: http://www.thehindu.com/todays-paper/tp-national/tp-telangana/tribals-deprived-of-their-legal-rights-over-forest-lands-cpi/article18970041.ece

[7]The Wire (2018), Chhattisgarh Govt. Cancels Tribal Rights Over Forests to Facilitiate Coal Mining, available at URL: https://thewire.in/agriculture/chhattisgarh-govt-cancels-tribal-rights-over-forests-to-facilitiate-coal-mining

Jharkhand, a global summit was conducted to attract foreign and private investor in Jharkhand. Raghubar Das government spent over Rs 150 crore on branding and face-lift before rolling out the red carpet for potential investors. The fact is that in last two year several deaths were happened due to starvation in Jharkhand. And Raghubar Das government planned to spend 4,000 Rs per plate". It is expected that Rs 1.50 crore would be spent for providing food at least three times on two days for those in-charge for security." Including this around Rs 10 crore spent on beautifying the city with flowers".[8] However the fact is after the global investor summit it hardly attracted investor but such huge amount government has to be use for the development of tribal spent to decorate Ranchi city.

Scheduled Tribes are spread across the country mainly in forest and hilly regions. Basic needs of a common man; food, clothing, and shelter (*roti, kapda* and *Makan*) in the same manner tribal demand *Jal, Jangal* and *Jamin* as their basic need for their survival.[9] But in the early decades of independence, India faced several challenges such as wars with Pakistan and China, which made India to realized that, India is not as developed as required. Just after the war, several changes made in the Indian foreign policy at both internal and international level which includes establishment of several Dams to fulfill energy requirement, and establishment of heavy industries to create job and space in the markets abroad, and plan for larger road network to control border conflict and to manage trade, forests converted to wildlife sanctuary. However, all such, these developments directly or indirectly affected the tribal groups as it started on the tribal land. Which resulted huge displacement of tribal population from their ancestral land including in Jharkhand, Madhya Pardesh, Odisha etc. How the development process impacted Jharkhand capital Ranchi, only 8.52 % Christianity (mostly tribal) is living in the city, rest of them migrated to rural areas, as they unable to compete outsider in terms of employment. [10] Jharkhand state was formed on 15 November 2000. As per the 2001 census, the Scheduled Tribe (ST) population of Jharkhand State was 7,087,068 constituting 26.3 per cent of the total population (26,945,829) of the State. In general 91.7 per cent of Scheduled Tribes are primarily lives in rural areas. In which highest portion of STs living in Gumla district with 68.4 per cent and lowest in Kodarma and Chatra district with 0.8 and 3.8 percent.[11]

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[8]Financial Express (2017), Jharkhand spending over Rs 150 cr on branding, face-lift, abailable at URL:https://www.financialexpress.com/economy/jharkhand-spending-over-rs-150-cr-on-branding-face-lift/546996/

[9]Sahoo, Sarbeswar (2013), Civil Society and Democratization in India: Institutions, Ideologies and Interests, UK: Routledge, pp-9.

[10]Population of Ranchi (2018), 0http://indiapopulation2017. in/population-of-ranchi-2017.html

[11]Government of Jharkhand (2018), Tribals of Jharkhand, http://www.jharkhand.gov.in/tribals

Table 1: Rural Population Living Below Poverty Line (I 993-94, 1999-2000 and 2004-05) (in *%)*

Category	1993-94	1999-2000	2004-05
Total	50.19	27.09	41.79
ST*	66.02	45.86	62.28
GAP	15-83	18.77	20.49

Sourer- PP Division. Planning Com mi won.

If we see the table 1 data it is clear that population living in rural area specially STs not improved since 1993-94 below poverty line percentage was 66.02 which was later improve to45. 86 in 1999-2000, but again reached 62.28 percent in 2005-05, quite higher than the earlier one.

Table 2: Literacy Ratvi of STs and Total Population
0"*)

Category	1971	1981	1991	2001
Total Population	29.45	36.23	52.21	65.38
Scheduled Tnbes	11.30	16.35	2960	47.10
GAP	18.15	19.88	22j61	18J8

Sourer: Ministry of Human Roomer Development

If we focus on the literacy rate among STs compare to total population we can see that, even after so many programmes and policy, still literacy rate in 2001 was 47.10 percent, which was 11.30 in 1971.

Table 3: Female Literacy Races of STs and Total Population (tn%)

Category	1971	1981	1991	2001
All	18-69	2985	39.29	54.16
STs	L85	8.04	18.19	34.76
GAP	1384	21 61	21.10	19.40

Sourer. Ministry of I lumin Resource Development.

Mortality and Underxuitntxm	SC	ST	Others
1 Child Mortality (per 1.000 lirebmhil	83	84	62
2 Infant Mortality	39	46	22
3 Proportion (per cent) of Children with Anaemia	78	79	72
4 Proportion (per cent) of	21	26	14

Sourer: Hanning Committion: KFHS 2005-06 Report.

Table 3 make it clear the rate of female literacy among STs in not good, it was 4.85 percent in 1971, 8.04 in 1981, improvement noticed between 1981 to 1991 reached to 18.19 percent and even in 2001 was 34.76 percent became literate,19.40 GAP notice between total population and STs. And the other side

Mortality and Undernutrition rate of Child mortality among per 1000 is 84, Infant mortality was 46, proportion of children with anemia was 79, and the proportion of underweight children was 26. These data make it clear that, whatever spending is spent on programmes, policy, and schemes to up lift the status of tribal population is not achieved as such.

Five Year Plans

To improve the conditions of Scheduled Tribes, framers of the Indian constitution has incorporated several important constitution provisions to promote and protect their culture, traditions, customs, and to improve their economic condition. Including constitutions provisions, in and every Five Year Plan, programmes and policies were formulated to provide benefits to the tribal people. For the implementation of Five Year plan, adequate funds are released by the centre to uplift tribal populations in economic areas. And also ensure that the State/UTs including Central Ministries formulate, incorporate, and implement respected programme and policies in Tribal Sub-Plans areas to achieve socio-economic development. With the centre initiative STs. Ministry of Tribal Affairs also established for the settlement of dispute in between centre or state related to tribal affairs. Planning commission is also for the welfare of tribal people made several changes from time to time. In which several welfare programmes enacted by Indian government through various five year plans. In the First Five Year Plan (1951-56) clearly mentioned that real development can be achieved in true sense if the goals of the tribal and backwards class achieved. Thus, several provisions incorporated in the first five year plan to secure the development of tribal people. It was observed that, under this plan they will enjoy the fruits of their own labour and will not be exploited by more organized economic forces from outside.

Similarly, in the Second Five Year plan (1956-1961), Ministry of Home Affairs allotted several funds to the Ministry of Community Development to form Special Multi-purpose Tribal Blocks (SMPT) in areas with prominent tribal population. Expenditure to up-lift economic condition raised from 4.32 crores to 16.86 crores. Special Blocks like special Multipurpose Tribal Development Block is introduced with the aim of covering 71% of tribal areas.

And in the Third Five Year plan (1961-1966), it continues to review the SMPT Blocks. The government of India appointed a committee under the chairmanship of Verrier Elwin. The committee recommended that SMPT Blocks were renamed as Tribal Development Blocks (TDB) and it suggested being open in all areas where the population of tribal are more than 60%. 480 Tribal development blocks is made recommended by Elwin Committee allocating 52.55 crores. Government introduce credit facility to Tribal and provisions of scholarship and free ships and to provide technical training.

Another achievement was achieved through Fourth Five Year Plan (1969-1974), in which the Small Farmers Development Agencies (SFDA) and Marginal Farmers and Agricultural Labourers Development Agencies (MFAL), Tribal Development Agencies (TDA's) were established on the pattern of SFDA which addressed the problems of the tribal population. Under this plan The Drought Prone Area Programme (DPAP) was also created. Around 489 tribal development blocks were developed.

In the Fifth Five Year Plan (1974-79), Planning Commission set up "Task force on Development of Tribal Areas (1972)" with this assessment, the task force observed that in spite of huge investment by the Central and State governments for tribal development, the problems still remain the same and had not been solved.

In the Sixth Five Year Plan (1980 -85), the Integrated Tribal Development Project (ITDP) was implemented for reduction in unemployment and poverty, improving the quality of life through minimum needs programme and reduction in inequalities of income and wealth. During the Sixth Plan it has been observed that the development of backward areas in general was to rely, to a greater extent, on growth of agriculture, promotion of small scale industry, self owner business, and related programmes, Improvement of economic condition of the tribal should be the first preference and suitable programmes of horticulture, cattle development, poultry and piggery etc were carried out. Under this plan, Modified Area Development and Community Development Approach launched also introduce modern Technology based on local materials. Including reform of subsidy system for Self–Reliance for specific period of time started.

Identification the Development Blocks made in Seventh Five Year Plan (1985-90), where tribal population lives in majority and their constitution into ITDPs to adopt integrated project which based on development. Release funds to the Tribal Sub Plan from the control of State Plan and establish a proper administrative structure in tribal based area. In the Eighth Five Year Plan (1992-97), problems related to the implementation of schemes are discussed, and the planning commission tried to be more practical. About 40 lakhs S.T families below the poverty Line were targeted for the economic assistance.I.T.D.P was given full control and dedicated officers and trained person were appointed for tribal regions.

The strategy of Eight Plan was to focus on the improvement of living environment of the tribal's by give them better facilities and basic civic amenities. Including this reduction of poverty and employment, also reduce the income inequalities, and to improve the quality of life through minimum needs programme, this plan also focused on the strengthening of infrastructure to avoid exploitation in Tribal Sub-Plan area and trying to gain the confidence of tribal's through education and other efforts. Around Rs. 16902.66 crore has been used by the

government of India in the Eighth Five Year Plan. Again in Eight five year plan adequate emphasis were laid down to improve tribal economic status in agricultural and education sector. Special schemes launched for of tribal women to educate them. Rights were given on non-payment and minimum wages and rights to collect minor forest produce. State governments were directed to convert forest villages to revenue villages after notification to explore forest resources.

Ninth Five Year Plan (1997-2002) was different than previous plan, in this plan programme and policy were more concentrated to achieve the goal rather than to form, it has been tried to achieve the seven percent growth rate for the economy in especially in Tribal affairs. This Plan main objective was to generate adequate productive employment, eradicate poverty level, women empowerment from socially disadvantages groups, ensuring food and nutritional security for backward class or vulnerable society. It also gives the opportunity for full participation of poor class in the government policies. Launching of National Common Minimum Programme for Minor irrigation and allocated funds for tribal community for water harvesting and soil conservation to improve their socio-economic status. "Eklavya Model Residential School" launched under residential schools for VIth to XIIth standard.

In the Tenth, Eleventh and Twelfth Five Year Plan same problems were discussed such as reduction of poverty by 5 percent by 2007, providing high income employment in addition with labour force, reduction of gender gaps in literacy, rapid and inclusive growth, skill based employment generation, economic sustainability, and increase growth rate in agriculture, industry and services. In the Tenth Plan, the Working Group on Empowering the STs has recommended Rs. 10470.00 crore against the Ninth Plan total outlay of Rs.3174.13 crore.[12] Hostel facility was launched for Scheduled Tribal Boys to cover most of tribal students. National Scheduled Tribal Financial Development cooperation was introduced and 'Adivasi Mahila Sashaktikrana Yojna' launched to provide financial assistance to women.

Under the Eleventh Five Year Plan (2007 -12) initiated programs such as: development of retail marketing and developmental Facility, Minor forest produce development activity, Vocational Training, Skills Upgradation and capacity building of S.T artisan, research and development and I.P.R Rights, Finance Commission for Tribal areas under Article 275(1), recommendation of Tribal sub-plan by Dhebhar Commission by installing mining and industrial complex in mineral rich tribal areas were implemented

[12]Planning Commission (2001), Empowering the Scheduled Tribes: For the Tenth Five Year Plan (2002-2007), Government of India, New Delhi.

Under the Twelfth Five Year Plan (2012-17) as per the 2001 Census it was noticed that the Scheduled Tribes (STs), population reached 84.33 million which constitute 8.2 per cent of the country's population. In which most of the tribal still live in forests, hills or isolated groups in relatively remote areas, which make it more difficult to deliver essential services to them and has also made it much more difficult for them to benefit from the acceleration of overall growth. Out of the total ST population, 2.59 million (3.07 per cent) belong to Particularly Vulnerable Tribal Groups (PVTGs) earlier referred to as Primitive Tribal Groups (PTGs). There are 75 identified PVTGs spread across 17 States/UTs.[13].

Modifications in Cost Structure of AIBP for Surface Water for Special Category States & Tribal Areas:

- Reduce Eligibility of Individual Schemes from 20 to 5 ha
- Reduce Eligibility of Schemes within 5 km from 50 from 20 ha

The Accelerated Irrigation Benefitted Programme (AIBP) was taken up with a view to provide Central assistance to encourage the completion of ongoing projects and to help States in creation of irrigation potential. In case of minor irrigation schemes, the central assistance is provided to the projects in the States of North-Eastern Region, hilly States namely, Himachal Pradesh, Jammu & Kashmir, Uttarakhand, undivided Koraput, Bolangir and Kalahandi (KBK) districts of Orissa and projects benefitting tribal areas and drought prone areas. Central assistance is provided as grant which is 90% of the project cost. AIBP funding is on the basis of proposal made by the State Governments.[14] A provision of Rs 9000 crore has been proposed under tribal and drought prone areas as centrally sponsored scheme and 1.12 mHa ground water irrigation potential will be created.

Constitutional Safeguards

Indian constitution has several provisions to protect and promote the rights of Weaker Section, including STs. Constitution not only guarantees the equality before the law under Article 14, but also protects the tribal communities from discrimination with special provisions for socially and educationally backward classes under Article 15 (4). With the Article 16 (4) State empowers to make provisions for reservation in appointments for backward class citizens. The states in the Indian union strive to promote educational and economic interests with special care of the weaker sections of the people in particular. Article

[13]Twelfth Five Year Plan (2012-2017) Social Sectors by Planning Commission, Government of India, available on URL: https://tribal.nic.in/writereaddata/AnnualReport/Twelfth Five Year Plan 2012-17.pdf

[14]Planning Commission of India (2012-2017), Minor Irrigation And Watershed Management for The Twelfth Five Year Plan, available at URL: http://planningcommission.gov.in/aboutus/committee/wrkgrp12/wr/wg_migra.pdf

19(5) provide safeguard of Tribal Interest in Property, freedom to move in any place except restricted zones of J.K and North East States to provide special restriction for protection of interest of the members of S.T. Article 23 prohibits traffic in human beings, beggars and other similar form of forced labour. Article 29 is related to promote cultural and educational rights, so S.T communities can preserve their languages, dialects, cultures. The states also promise to protect them from social injustice and all forms of discrimination (Article 46).

Article 244 provides special provisions in administration of Schedule Areas, Scheduled Tribes and Tribal Areas. These provisions are also mentioned in the Fifth and Sixth Scheduled of the Indian constitution. Article 275 (1) provides grants in aid from the Union of India (both capital and recurring) for promoting the welfare of the Schedule Tribes or raising the level of Schedule Areas, which provides special provisions to the states of Assam, Meghalaya, Tripura and Mizoram. Article 330, 332 and 335 discussed special provision for representation to the STs in the House of the Peoples (Lok Sabha) and in the State Legislative Assemblies. It further includes the setting up of separate departments in the States and National Commission at the Centre to promote welfare and safeguard on their interests (Arts 164 and 338). Article 342, defines Scheduled Tribes as the tribes or tribal communities or part of or groups within these tribes and tribal communities, which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory. Article 366 (25) refers to scheduled tribes as those communities who are scheduled in accordance with Article 342 of the Constitution. Furthermore, it empower the State to appoint a Commission to investigate the condition of socially, economically and educationally backward classes with Article 340, and to specify those Tribes or Tribal Communities be deemed to be as STs in Article 342.

The claims of members of S.C and S.T shall be taken into consideration in the matter of appointment of posts under Union and state as far may be consistent with maintenance of efficiency of admistration. Under the Article 338 special officers for S.C and S.T to be appointed by President and article 371(A), 371 (B), 371(C) contain special provision in the state of Nagaland, tribal areas of Assam and Manipur respectively. Article 339 (1) is related to appointment of commissioner by the President to report on the administration of Scheduled Areas and the welfare of S.T in the states. Article 275(1) made provisions for grant –in – aid for meeting the cost of schemes of development as undertake by state with the approval of govt. of India for purpose of promoting the welfare of S.T and raising the level of administration of Scheduled Areas. Article 339(2) empowers the Union Executive to issue directives to state as drawing up and Execution of schemes specified in directive to be essential for welfare of S.T in the states.

Centre sponsored Programme and Schemes

There are some other programmes underlined by the Ministries of Rural Areas and Employment and Urban Affairs and Employment implemented nationwide. The major programmes are Integrated Rural Development Programme (IRDP), Jawahar Rozgar Yojana (JRY), Prime Ministers Rozgar Yojana(PMRY), Training For Self Employment For Rural youth (TRYSEM), poverty alleviation programme, Swarna Jayanti Swa-Rozgar Yojna (SJSR), Swarna Jayanti Rozgar Yojna (SJRY), and Mahatma Gandhi National Rural Employment Guarantee Act (MNAREGA), to create employment opportunities for socially and economically weaker sections of the Indian society.[15] Furthermore, there are also various poverty alleviation programmes began in 1980s and 1990s which bought down the poverty ratio from 63.14 (1983-84) to 51.10 in (1993-94), two effective law were introduce, which deal with the crimes against the Scheduled Tribes – Civil Rights Act (1955), and the Scheduled Caste, Scheduled Tribes (Prevention of Atrocities) Act 1989.

Besides theses, Government of India also enacted and amended the constitution (73rd Amendment) for ensuring the representation of backward and marginalized section in Panchayati Raj institution in 1993. The *Panchayati Raj* institutions give the larger representative base for weaker section than any country in the world. To make sure the attention on development of STs, a separate Ministry was constituted in October 1999 known as Ministry of Tribal Affairs. The new Ministry focused on social security and social insurance, project formulation research and training, tribal welfare planning, promotion and development through voluntary efforts like programmes related to administration and tribal welfare. In this regard, sectoral development programmes for STs Communities, monitoring, evaluation, the policy and planning as also their coordination is the responsibility of the State, UTs and Central Ministries. Each Central Ministry appoints a nodal Ministry of Department concerning its sector. The Ministry of Tribal Affairs also supports and supplements these efforts of State Governments/U.T. Administrations. It implements several sponsored programmes by Central government and Central sector schemes under which financial assistance ranging from 50 per cent to 100 per cent allotted to the States and UTs to construct new hostels and facilitates coaching for ST students for competitive examinations, free distribution of books, scholarship, upgradation of their merit, setting up research and training centre, ashram schools, vocational training centers, village grain banks, and educational complexes for ST girls in low literacy pockets and development of primitive tribal groups. Besides, numerous non-governmental organizations (NGOs) also take initiative for the development of STs through advocacy and awareness

[15]Misra S.N. (2005), *Poverty and Its Alleviation*, New Delhi: Elegant Printers, pp 103

programme. This development has been credited to the National Scheduled Castes Finance and Development (NSFDC) for providing financial needs through the banks and other institutions.

Central Government, State Government, as well as financial agencies and institutions, commercial banks, co-operative banks, National Bank for Agriculture and Rural Development (NABARD) and voluntary organization also provide their services in tribal areas for their development. Minor forests produce (MFP) and surplus agricultural produce (SAP) were implemented to provide marketing assistance and remunerative prices to the tribal community with an intention to protect them from the exploitation of private traders and middlemen. Towards such an initiative, the Tribal Cooperative Marketing Development Federation (TRIFED) was set up in 1987. The TRIFED has ensured remunerative prices for the MFP to tribal.

These are some major commission and committees appointed for the welfare of tribal people so far:

1. The Social Welfare Team of the Committee on plan projects 1959. The Verrier Elwin Committee on Tribal Development.
2. The Committee on Tribal Economy in Forest Areas -1967
3. The Schedules Areas and Scheduled Tribal Commission (Dhebar Committee 1961)
4. The Special working Group on Cooperatives for Backward Classes-1961
5. The Task Force on Development of Tribal Areas -1972.
6. The Dube Committee -1972.
7. The Study Team on Co-operative Structure in Tribal Development Project Areas -1976.
8. The Study Group on Relief of Indebtedness Land, Alienation and Restoration in Development Agency Area -1973
9. The team of Marketing, Credit and Cooperation in Tribal Areas -1978 (Shri K.S. Bawa Committee).
10. The Working Group on Development of Scheduled Tribes during the 7th Five Years Plans (1985- 90)
11. TSP and SCA to TSP, a Central Standing Tripartite Committee was set up by the Planning Commission- 1999
12. The National Commission for Scheduled Tribes- 2004.

In 1961 Dhobar Commission recommended an integrated approach based on the minimum necessary items like food, drinking water, employment, educational health and village road. In 1972, Development of Tribal Areas were constituted and the Dupe committee suggested new strategy in order to tackle the problems of tribal population, it is important to see the policy and its implementation, flow of funds and benefits are assessed by the beneficiary.

As per the 1991 Census total population of Scheduled Tribes (STs) contribute 67.76 million with representing around 8.08 per cent of the country's population spread over 94,000 tribal villages. It also indicates that 42.02 percent of the Scheduled Tribes are mainly workers, of whom 54.50 percent were cultivators and 32.69 percent works as laborers in agriculture. Thus, around 87 percent of major workers were involved in primary sector activities. Rate of literacy is about 29.60 percent, compare to the national average of 52 percent. An average of three-quarters women population among the STs is illiterate. Dropout (from school) rate in these community were also recorded high, only smaller number of students reached to the higher level. Higher number of Scheduled Tribes are under the below poverty line. In the report of the Planning Commission 1993-94 figure that 51.92 percent of rural and 41.4 percent of urban were still living below poverty line (Ministry of Tribal Affair's Website).[16]

As per 2001 census of India Scheduled Tribes population reached 84.3 million, which accounts for 8.2 percent of total population of the country. The census 2011, total population of Scheduled Tribes is 104,281,034 in which 93,819,162 leaving in rural area and the 10,461,872 are leaving in urban area.[17] The population of Scheduled Castes at 16.6 per cent and Scheduled Tribes at 8.6 percent together forms a quarter of the total population.[18] STs inhabit in all the States except Haryana, Punjab, Chandigarh, Delhi and Pondicherry. While the highest concentration of the ST population is found in the North-Eastern States of Mizoram (94.19%); Nagaland (88.98%); Meghalaya (86.43%); and Arunachal Pradesh (64.63%) and in the UTs of Lakshadweep (94.06%); and Dadra and Nagar Haveli (78.99%), there are high concentrations in the States of Madhya Pradesh (20.26%); Orissa (22.19%); Gujarat (14.79%); Assam (12.42%); Rajasthan (12.57%); Maharashtra (8.87%); Jharkhand (26.34 %); Bihar (7.66%); and Andhra Pradesh (6.63%) and Andaman & Nicobar Islands (8.27%) (source: Ministry of Tribal Affair's Website).

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[16]Ministry of Home Affairs (2014), *Scheduled Tribes population in India*, Office of the Registrar General & Census Commissioner, Government of India, Accessed on 18 March 2004, [online web], Available on URL: http://censusindia.gov.in/Census_And_You/scheduled_castes_and_sceduled_tribes.aspx

[17]Ministry of Tribal Affairs (2014), *Tribal Profile at a Glance*, New Delhi: India Ministry of Tribal Affairs, Accessed on 18 March 2004, [online web], Available on URL:http://tribal.nic.in/WriteReadData/CMS/Documents/201306061001146927823STProfileataGlance.pdf

[18]Express News Service (2011), *SCs, STs form 25% of population*, *says Census 2011 data,* New Delhi, Wed May 01 2013, 03:05 hrs Accessed on 18 March 2004, [online web], Available on URL: http://archive.indianexpress.com/news/scs-sts-form-25—of-population-says-census-2011-data/1109988/

The figure show the literacy rate from 1961 to 2001:-

	1961	1971	1981	1991	2001
Total Literate Population	24 %	29.4 %	36.2 %	52.2 %	64.84 %
Scheduled Tribes (STs) Population	8.5 %	11.3 %	16.3 %	29.6 %	47.10 %
Total female population	12.9 %	18.6 %	29.8 %	39.3 %	53.67 %
Total Scheduled Tribes (STs) female population	3.2 %	4.8 %	8.0 %	18.2 %	34.76 %

Above figure show the literacy level among the population of Scheduled Tribes including female, the data almost cover the period from 1961 to 2001. If we access the data we can see that the population of Tribal increase throughout the year as well as the literacy enrolment also increase but the enrolment of Scheduled tribes female population are not satisfactory compare to other.

It take long time to realised that the "Nehruvian Panchasheel was long on generalities and short on specifics", then the Government of India established a Ministry of Tribal Affairs to accelerate tribal development with all aspect, it began with the making of such draft on National Policy for Tribal. These draft were came out with the feedback from tribal leaders, concerned States, individuals, community, organisations in the public and the private sectors, and NGOs, the Ministry will implement the policy. The national Policy accepted the large population of Scheduled Tribes having poor literacy rate, living below poverty line, suffer from various heath disease, and vulnerable to adjust after displacement. To achieve the long standing objective, Tribal affairs focused on the education of tribal which help to advocate the National Policy are made for them. These policies ensure;

Sarva Shiksha Abhiyan programme run by the Ministry of Human Resource Development to improve literacy rate, it included Tribal Groups.

- To facilitate Schools and hostels in areas where no such facilities exist.
- At least one model residential school is located in each tribal concentration area.
- Education is linked with provision of supplementary nutrition.
- Special incentives like financial assistance, pocket allowance, free distribution of textbooks and school uniforms are provided to weaker sections.
- Teaching is imparted in tribal' mother tongue at least up to the primary level.
- Pedagogy is made relevant so that tribal do not find it as alien.
- Curriculum and co-curriculum include aspects of Meta skill up gradation of tribal children.
- Curricula for Meta skill up gradation are to include aspects of tribal games and sports, archery, identification of plants of medicinal value, crafts art and culture, folk dance and folk songs, folk paintings etc.

- Emphasis is laid on vocational/professional education. Polytechnics are set up for studies in subjects like forestry, horticulture, dairying, veterinary sciences, etc.[19]

Displacement-Resettlement, Health and Education Performance

Displacement of tribal population is a major concern because it affects a large population. Regularly construction of Dams, Roads, quarrying and mining operations, establishment of heavy industries and reservation of forests for National Parks and environmental reasons force tribal groups to leave their land, that affected nearly 85.39 lakh tribal had been displaced until 1990. It constitutes around 55.16 percent of total displaced people. Most of the resettlement takes in isolated area, where lack of drinking water, school, health, road and agriculture land create major concern for deteriorating their life style, custom and culture. This type of displacement violate the Fifth Scheduled of the constitution, as it not provide the ownership of natural resources and land which are essential for their way of life. Other side, the National Policy for Tribal, stipulated that, displacement of tribal people is "kept to the minimum and undertaken only after possibilities of non-displacement and least displacement have been exhausted. When it becomes absolutely necessary to displace Scheduled Tribe people in the larger interest, the displaced should be provided a better standard of living."[20]

The National Policy, therefore, mandates that the following guidelines be followed when tribal are resettled; when displacement becomes predictable, each STs Members having land in the prior settlement shall be given land against land. At least two hectares of arable land is considered essential and viable for a family which includes man, his wife and unmarried children. They are also allowed to fishing rights in their original habitat including other reservoir or any other alternative area. Reservation reimbursement enjoyed by them at original settlement to be continued in resettlement area. Government financially assists for one and a half year's minimum for loss of agriculture, customary rights and usufructuary rights over forest production. Resettlement of Tribal to be close to their original habitat, and let them continue their practice of ethnic, linguistic and socio-cultural identity and the network of relationship and mutual obligations, free land is to be distributed for social and religious congregations. Higher monetary help shall be given, if resettlement is away from the district. Large resettlement of tribal should be facilitates in new place including roads, electricity, safe drinking water, educational, drainage and sanitation, and health care facilities, fair price shops, a community hall and a panchayat office.

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[19]Panda, B,K, (2008), Understanding Multiple Disadvantages for Inclusive Educational Development of Scheduled Tribe Children, online assessed, available on URL: http://www.aiaer.net/ejournal/vol231212/4.%20Panda%20BK.pdf

[20]Mohanty, P. K. (2006), Encyclopaedia of Scheduled Tribes in India: In Five Volume, New Delhi: Isha Books, pp-14.

As a result of the improper implementation of the mentioned policies, schemes and programmes, the tribal citizens of India have been practically deprived of many civic facilities and are isolated from the modern and civilized way of living since so many decades.

Since we have the largest population of tribal, If we look back 71 year experience regarding development of tribal under all five year plan, we observe that, all the development programme are mainly concentrated on tribal development to the educational and social sectors dealing with some basic problems such as poverty, lack of road and communication facilities, problems of drinking water, irrigation, education, health and housing have been taken up. Some of these introduced in the fifth five year plan, created tribal sub-plan to eliminate the exploitation of scheduled tribes, mainly in the area of land alienation and money lending to develop tribal population though such schemes. Despite huge investment in every five year plan and all such efforts, the results have fallen short of expectation. It also noticed that central as well as the state government regularly allocating more and more funds every year for the upliftment of their status. But the larger population of tribal could not get benefit from these facilities because of improper implementation of tribal development schemes.

Tribal Movements

Most of the development projects were established on tribal land or marginalized people land, every time tribal's were protested either to resettlement or to get back their land, these are some movement, were tribal struggled to protect their land from the interest of the government; Chipko Andolan, Save the Bhagirathi, Stop Tehri project committee, Narmada Bachao Andolan, Youth Organizations and tribal people in the Gandhamardan Hills, the Baliapal and Bhogarai test range in Orissa, the Appiko Movement in the Western Ghats; groups opposing the Kaiga nuclear power plant in Karnataka; the campaign against the Silent Valley project; the Rural Women's Advancement Society (Gramin Mahila Shramik Unnayam Samiti) formed to reclaim waste land in Bankura district and the protest against the establishment of Gumti Dam in Tripura these are the movement were tribal or marginalized group fight to save their inhabitant land from deforestation, establishment of Dam, Mining Project or establishment of Heavy industrial plant.

And the other side India suffer with the conflict of India-Chinese war in 1962, which observe by government that to develop extensive network of roads all over India. The motive behind the road network is clear that to control the border conflict, open the region to traffic everything, supply of natural resources to industries, which caused blasting of mountain and deforestation. The overall environment damage which also displaced huge number of tribal families from

mountain and forest are to other place. Another immense displacement was occurred in Narmada basin which covers 94,500 square kilometers with the population around 21 million mainly tribal group, such as Bhils and Gonds. Narmada valley is surrounded by forest, Narmada River development project on Narmada River include the construction of 30 large dams and 3,000 medium and small dams. The project expert described that the project will change the living status of original habitants and it also increase the food production in the region including hydropower generation which provide electricity to Gujrat, Madhya Pradesh and Maharastra. Experts did not explain the overall environment damage, social and technological impact of this project, but it was clear that construction of dam and reservoirs will submerge 350,000 hectares forestland and 200,000 hectares agriculture land. Construction of Sardar Sarovar Dam on Narmada River alone submerge 40,000 hectare of land and 254 villages, this construction of dam reservoir submerging 91,348 hectares and displacing 120,000 people many of them are tribal.[21]

An estimated 300 lakh persons have been displaced in India since 1951 in the name of national development.[22] Tabel below indicate the displacement of tribal due to development programmes of Mines, Dams, establishment of Industries, Wild life sanctuary and others like; construction of highway, displacement from drought area to other place, and lack of agricultural land. The constitution of India, Section 31 A (1), provides for "payment of compensation at a rate which shall not be less than the market value thereof"[23] The Rehabilitation Bill policy contains special provisions for affected families belonging to the SC and STs, including this a provision has been made for preparation of a tribal growth plan. This plan would settle the disputed land rights and "restoring titles of tribal on alienated land". It also include a programme for the development of fodder, fuel and non-timber forest produce resources on non-forest lands, however rights to forests access is denied in the resettlement arrangements.[24]

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[21]Hira, Anil and Parfitt, Trevor W. (2004), Development Projects for a New Millennium, USA: Prager Publishers, pp-71.

[22]Pfeffer, Georg and Behera, Deepak Kumar (1997), Contemporary Society: Tribal situation in India, New Delhi: Concept Publishing Company, pp-70.

[23]Cernea, Michael M. (1999), The Economics of Involuntary Resettlement: Questions and Challenges,Washington D.C.: World Bank Publication, pp 202

[24] Somayaji, Sakarama and Talwar, Smrithi (2011), Development–induced Displacement, Rehabilitation and Resettlement in India: Current issues and challenges, Oxon: Routledge. pp- 42

Tribal Displacement and Rehabilitation due to Various Projects in India (000, Persons)

S.No	Types of	Number of Displaced			No. of Rehabilitated		Backlog	
		Total	Tribal Region	Tribal	Total	Tribal Region	Total	Tribal
1.	Mines	2,100 (11)	1,415 (67)	1,200 (57)	525 (25)	300 (14)	1575 (14)	900 (75)
2.	Dams	14,000 (75)	7,000 (50)	5,300 (38)	3,500 (25)	1,315 (9)	10,500 (75)	3,945 (74)
3.	Industries	1,300 (7)	300 (23)	260 (20)	325	35 (325)	975 (75)	195 (75)
4.	Wild life	600 (324)	600 (100)	500 (83)	150 (25)	125 (21)	452 (75)	375 (75)
5.	Others	500 (3)	200 (40)	150 (30)	125 (25)	40 (8)	375 (75)	110 (73)
Total		18,500 (100)	9,515 (51)	7,410 (40)	4,625 (25)	1,850 (10)	13,875(75)	5,560 (75)

Source: Chaudhary, S.N. (2005), Human Rights and Poverty in India: Theoretical Issues And Empirical Evidences (vol-4), New Delhi: Concept Publishing Company, pp- 274.

A report made by the National Sample Survey (NSS), estimated the crude birth rate (CBR) is 22.79 percent, which slightly higher than the state average of 21.8 percent. The crude death rate (CDR) is likely to 8.50 percent which is again higher than 7.50 percent for the general population. The health status of the tribal population is not on equivalence with the rest of the state's population. The infant mortality rate (IMR) of STs is marginally lower than the IMR of SCs (64.74 percent) and there is noticeable difference between male (75.84 percent) and female IMR (54.48 percent). The NSS found that the main causes of death among infants are diseases of the circulatory system (49.06 percent) and respiratory system (23.45 percent). Disturbingly enough, NFHS data for 1992-93 and 1998-99 shows regressive trends with the total fertility rate increasing to 2.38 from 2.15 percent, the post-neonatal mortality rates to 21.9 from 18.0 percent, the child mortality rate to 38.9 from 39.0 percent and the under-five mortality rate fell to 63.2 from 67.6 percent.[25]

It has been noticed that huge population of tribal people are not getting adequate facilities after displacement from their land, they need special health care because of malnutrition, poor drinking water, hygiene and environmental sanitation. Lack of advocacy, awareness and apathy to utilize the available health services also affect their health status. Endemics like malaria, diarrhea, deficiency, and venereal diseases like AIDS are common diseases among tribal, they also suffer form a deficiency of vitamin A, calcium, vitamin C, and riboflavin. Lack of nutritional food is also major causes for reproductive problems among women and death of children under five.

[25]D.C Nanjunda et al. (2008), Ignored Claims: A Focus on Tribal Education in India (ed.), New Delhi: Kalpaz Publication, pp 162.

In a recent Human Rights Watch (HRW) report described that, School authorities regularly discriminate against children from weaker sections, denying them their right to education. Just for year back Indian Government promised for guaranteeing free education to every child at the age 6 to 14. But in his 77 page report, "They Say We're Dirty': Denying an Education to India's Marginalized," shows that school authorities stop marginalized children to enter in the school because they wear dirty cloth. These laid the dropping out, or have dropped out. It clearly illuminates that, lack of accountability and grievance redress mechanisms are continuing obstacles to proper implementation of the Right to Education Act, 2009.

As per HRW reports nearly half-over 80 million children - drop out before completing their elementary education. At the time of drafting the Right of Children to Free and Compulsory Education Act, the central government recognized exclusion of children as the "single most important challenge in universalizing elementary education." But numerous education department officials at local, district, and state levels have been unwilling to accept that discrimination occurs in government schools, let alone attempt to resolve these problems.[26]

In an interview, discriminated children said that;

> *"The teacher tells us to sit on the other side," said "Pankaj," an eight-year-old tribal boy from Uttar Pradesh. "If we sit with others, she scolds us and asks us to sit separately. The teacher doesn't sit with us because she says we 'are dirty.'" (HRW, 2014)*

Case of Narmada Valley Project– India is one of the largest dam making nations in the global world causing single largest cause of displacement in the country for meeting the demand of global economy deemed to pay huge price in the name of development .The core issue of Resettlement and Rehabilitation remains a great challenge before the government. In order to deal with such issues a comprehensive National Rehabilitation and Resettlement Policy, 2007 have been made by Ministry of Rural Development, Government of India but nothing seems adequate to fulfill the needs and aspiration of people belonging to their own culture, language, customs, etc. The Narmada Valley Development Project aims to develop around 3,200 dams in the river Narmada and its tributaries with 30 big dams and rest as medium and small scale dams with the aim of bringing the most ambitious river valley project of the world. The expected no. of people that needs to be displaced is approx. 95,000. The dams were believed to be the Temples of Modern India as quoted by Jawaharlal Nehru,

[26]Human Rights Watch (2014), India: Marginalized Children Denied Education, April 22, [online web], Available on URL: http://www.hrw.org/news/2014/04/22/india-marginalized-children-denied-education

but it fails to achieve its goal due to the selfish aim of politicians, bureaucrats, contractors involved in the construction of projects. Only twenty-five of them were women, all of them considered 'heads of families', being widows or separated. The first dam built in Madhya Pradesh namely as Bargi Dam in 1990 leads to the submergence of land bodies of common tribes with no possible solution and rehabilitation programmes. The long battle of people along with their leader Medha Patkar led a battle against dam construction was noteworthy but their issues needs to be addressed in order to resolve the conflict and dispute addressing the helplessness attitude of the tribes. The core issue of Resettlement and Rehabilitation remains a great challenge before the government. In order to deal with such issues a comprehensive National Rehabilitation and Resettlement Policy, 2007 have been made by Ministry of Rural Development, Government of India but nothing seems adequate to fulfill the needs and aspiration of people belonging to their own culture, language, customs, etc. The core issue of the project remains a hindrance as it is neither binding to the government nor the individual surpassing the efficiency and urgent concern of people. As a result, Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came in force but the challenges remains a major concerns before the legislation and the government.

***Case of Singur*,** West Bengal – The West Bengal government in the year 2006 has acquired agricultural land to Tata Motor, for construction of Nano; the most prominent Project of Tata. The West Bengal acquired many land area from the Land Acquisition Act of 1894 but the compensation provided were not enough as demanded. It causes lowering of 40% of income growth for tenants. This multi Dollar project forced huge economic hardships for the affected workers as per the market value.

***Kerala* –** Kerala is well known for its rich forest, exotic beauty of flora and fauna with high Human Development Index of the country. Despite of this, the Kerala also suffers from the eviction of land areas estimated to be 4% of geographical area for the setup of various types of developmental Projects. In the decade of 1961-70 various developmental firms i.e N.T.P.C (National Thermal Power Corporation) established in 483 hectare of land for the setup of industrial Park in KINFRA Industrial Park and Barapol Hydro Electric Project in the state of Ernakulum region led to the displacement of 53,472 tribals families. The government never did any sort of resettlement plans over these areas and its impact and consequences affected thousands of innocent family. The estimated compensation demanded was not paid adequately due to lot of governmental loopholes attached to the policy formulation. The developmental Projects i.e Cochin International Airport Limited, Kochi Metro was also setup with the aim of providing smooth and accessible connectivity to the people but the land have been acquired illegally without any compensation and redressal

of their issues. The airport and land for metro projects over 9,3941 hectares of land with millions of families being displaced.

Case of Chhattisgarh – Chhattisgarh constitute 42 tribal groups and a population of 2,08,33,803 as per 2001 Census with 31% of tribal groups mostly belonging to B.P.L group. The Chhattisgarh state is rich in various types of mineral rich deposits of coal, bauxite, mica, iron ore in the region mostly occupied by Adivasi. There were various wildlife sanctuary and Reserve being developed with the aim of protecting the fauna and flora of the state. Chhattisgarh is believed to be one of the rich deposits of resources with economically rich deposits of resiurces in terms of conventional sources of energy. These areas are Jashpur, Tilda, Devbhog, Dashpur, Dhamtri regions. Since, government rules keep on changing with various developmental Projects started and numerous protest in 2008 under 'Jameen Bachao Sangharsh Samiti' as government have handed over 105 sq. km of rich mineral deposit area with population of more than 60 villages been displaced and given to company namely Jindal Power Steel Limited with abundance of gold, platinum, diamond , precious metals and mineral deposits. Various cement factory has also been established namely Lafarge, ACC Cement, Ambuja Cement corporation of India and support of Swiss multinational leading to displacement of huge population with no compensation has been paid and registered for the poor and helpless tribals.

Case of Jharkhand – The state of Jharkhand is the 24th state separated from Bihar in 2000 with the aim of separate statehood and aim of providing smooth governance but it has faced centuries of injustice from various stakeholders. The tribals of Jharkhand settles in the areas of heavy forest, terrains and mineral rich areas and deposits but their land has always been captured and sold indefinitely. As a result of this for avoiding and saving the selling of lands, two major act has been passed by the legislators i.e C.N.T and S.P.T to avoid selling of tribal land to non – tribals and a court has been established called 'Special Area Regulation Court' of 2007 for recovering tribal land areas. The legal assistance also provided 50 lakhs to solve dispute of land related cases but less than 10% has been allocated and used due to long pendency of judgments and delay of result, lack of reporting, witnesses, etc. There were various projects being established namely hydroelectric, mining, etc in the regions of Chhottanagpur Plateau and river of Koel and Damodar River. The land areas been sold in multiple hands without the consent of Adivasi for various Iron and Steel Projects, mining deposits, etc. Various area of Jharkhand require proper and immediate attention and support ut lack of measures leads to its un-development and loss of land and ultimately poverty with no scope of support. The area of Jaduguda situated in Purbi Singhbum District is rich in the uranium deposits but it is one of the most un- developed regions of the state due to the faulty policy and programmes. Jharkhand is also a region of rising naxal

movement and zone of 'Red Corridor' as youth being regularly involved in the active naxal operations without addressing the core issues of Job, Education, Employment and sanitation health concerns of the Adivasi.

Conclusion

After 71 year of India's independence, the conditions of the tribal groups, in most cases, have not seen visible improvements and still constitute a weaker section of the Indian society. This paper dealt with various concerns and challenges being faced by *adivasi* and the constitutional provisions, case studies of some areas. All the developmental projects has been initiated for the illusionary aim of development but cost have been paid by the poor tribals who have long been protecting their land with nothing in their hand and ancestral property been occupied in the name of development. The various acts and programmes had been initiated but the concerns and challenges keep on rising without any possible outcome. These include cash compensation, monetary benefits, education, land based remedy, capacity building, resettlement planning without the major focus being paid forwarded towards education, jobs opportunities and employment as well as personal care been given to them to dealt with the upcoming challenges. The need of consultative, participatory, transparent, informed process should be put in place to ensure that outcome of compulsory acquisition has not affected persons in becoming the partners of development. The idea of development and growth is equally important as the need to provide compensation, rehabilitation, resettlement, packages and conditions were addressed all together. The government and society feels that we need to teach them rather there are lot of things whether customs, traditions, moral, cleanliness, preservation that needs to be learnt by us and preserved to avoid the immense loss of their presence. This could be seen from ecological, economy and educational angles. It is very unfortunate that the adopted policies, programmes and plans have not seeped deep into these underprivileged sections of the society as they are often squandered by the top echelons of the concerned authorities. For instance, in every five year plan, government of India has made so many policies and programmes to eliminate poverty, illiteracy, equality, unemployment, prostitution, trafficking, child labour, bonded labour, untouchability, discrimination, violence in domestic help, naxal issues, and land acquisition etc., but all these have remained as mere words on paper without any substantial outcome.[27]

As tribal expect that it might take some time but the status will improve in coming year. However the fact is that, the situation in becoming worst than ever, recently Chhattisgarh government strips forest community of land rights of tribal communities in the Surguja district to make way for coal mining.

[27]Singh, M. Romesh (2006),Tribal Development in 21st Century: An Experience from Manipur, New Delhi: Mittal Publication, pp 39.

Chhattisgarh government also closed schools in areas where it should have to expand. Nearly 3,000 schools are being closed down in the state. A quarter of the schools lie in conflict-affected Bastar, mostly tribal populated area. Similarly, Maharashtra government to shut 4,093 schools in 2017 reports and Andhra, Telangana Plan to Shut 10,000 Schools. Right to Free and Compulsory Education Act, 2009 is mere words on the page rather in reality. It is hard to know that how government will improve education status of tribal population without school.

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